

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D55748  
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Submitted - April 18, 2018

JOHN M. LEVENTHAL, J.P.  
LEONARD B. AUSTIN  
JEFFREY A. COHEN  
BETSY BARROS  
LINDA CHRISTOPHER, JJ.

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2016-10151

DECISION & ORDER

Samantha Apsel, appellant, v Steamy, Inc., et al.,  
respondents.

(Index No. 10641/14)

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Kaston & Aberle, LLP, Mineola, NY (Richard M. Aberle of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., Brooklyn, NY (Robert D. Grace of  
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (William B. Rebolini, J.), dated July 28, 2016. The order granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The plaintiff commenced this action to recover damages for personal injuries allegedly sustained by her as a result of a motor vehicle collision between a vehicle she was driving and a vehicle driven by the defendant Paul R. Delmonico and owned by the defendant Steamy, Inc. The defendants moved for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident. The Supreme Court granted the defendants' motion, and the plaintiff appeals.

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The defendants met their prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyster*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine were not caused by the subject accident (*see Gouvea v Lesende*, 127 AD3d 811; *Fontana Aamaar & Maani Karan Tr. Corp.*, 124 AD3d 579; *see generally Jilani v Palmer*, 83 AD3d 786, 787).

In opposition, however, the plaintiff raised triable issues of fact as to whether the alleged injuries to the cervical and lumbar regions of her spine were caused by the subject accident (*see Perl v Meher*, 18 NY3d 208, 218-219).

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

LEVENTHAL, J.P., AUSTIN, COHEN, BARROS and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court