

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

D56549  
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Argued - May 22, 2018

CHERYL E. CHAMBERS, J.P.  
LEONARD B. AUSTIN  
JEFFREY A. COHEN  
COLLEEN D. DUFFY, JJ.

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2016-09623

DECISION & ORDER

Arthur Baratov, appellant, v H.L. Robertson, Jr.,  
respondent.

(Index No. 15098/14)

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Wellerstein & Associates, P.C., Maspeth, NY (Avraham Goldberg of counsel), for  
appellant.

Martyn, Toher, Martyn & Rossi, Mineola, NY (Giovanna Condello of counsel), for  
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Janice A. Taylor, J.), entered July 19, 2016. The order granted the defendant's 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 affirmed, with costs.


This action arises from a motor vehicle accident that occurred on November 30, 2013, in Manhattan. The plaintiff commenced this action to recover damages for personal injuries that he allegedly sustained in the accident. The defendant 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 defendant's motion, and the plaintiff appeals.

The defendant met his 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 Eyer*, 79 NY2d 955, 956-957) through competent medical and other evidence (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, the plaintiff failed to raise a triable issue of fact (see *John v Linden*, 124 AD3d 598, 599; *Irizarry v Lindor*, 110 AD3d 846, 848). Accordingly, we agree with the Supreme Court's determination to grant the defendant's motion for summary judgment dismissing the complaint.

CHAMBERS, J.P., AUSTIN, COHEN and DUFFY, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court