

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

D57337
T/afa

_____AD3d_____

Submitted - June 13, 2018

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

2017-08839

DECISION & ORDER

Samuel Soto, respondent,
v Jeanneth C. Garzon, appellant.

(Index No. 10800/14)

Desena & Sweeney, LLP, Bohemia, NY (Shawn P. O'Shaughnessy of counsel), for appellant.

Harmon, Linder, & Rogowsky (Mitchell Dranow, Sea Cliff, NY, of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (Dicia T. Pineda-Kirwan, J.), dated June 21, 2017. The order, insofar as appealed from, denied 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 insofar as appealed from, with costs.

The plaintiff commenced this action to recover damages for personal injuries he allegedly sustained in a motor vehicle accident that occurred on January 12, 2014. 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, among other things, denied the defendant's motion, and the defendant appeals.

The defendant submitted competent medical evidence establishing, prima facie, that

November 21, 2018

Page 1.

SOTO v GARZON

the alleged injury to the lumbar region of the plaintiff's spine did not constitute a serious injury under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614), and that, in any event, this alleged injury was not caused by the subject accident (*see Gouvea v Lesende*, 127 AD3d 811; *Fontana v Aamaar & Maani Karan Tr. Corp.*, 124 AD3d 579; *Jilani v Palmer*, 83 AD3d 786, 787).

In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury to the lumbar region of his spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d), and as to whether the alleged injury was caused by the accident (*see Perl v Meher*, 18 NY3d 208, 218-219; *Jilani v Palmer*, 83 AD3d at 787).

Accordingly, we agree with the Supreme Court's denial of the defendant's motion for summary judgment dismissing the complaint.

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

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court