

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

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Submitted - September 26, 2018

WILLIAM F. MASTRO, J.P.  
ROBERT J. MILLER  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2016-11195

DECISION & ORDER

Rebecca Kaplan, appellant, v Lori Margolis, et al.,  
respondents.

(Index No. 17205/12)

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Sweetbaum & Sweetbaum, Lake Success, NY (Marshall D. Sweetbaum and Joel A. Sweetbaum of counsel), for appellant.

Richard T. Lau, Jericho, NY (Gene W. Wiggins 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 (Peter H. Mayer, J.), dated September 20, 2016. The order, insofar as appealed from, granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, 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 she allegedly sustained in a motor vehicle accident that occurred on July 11, 2009. 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 accident. The Supreme Court granted the motion, and the plaintiff appeals.

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 Eyler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged

injuries to the lumbar region of the plaintiff's spine and the plaintiff's left shoulder did not constitute serious injuries 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).

In opposition, however, the plaintiff raised a triable issue of fact as to whether she sustained serious injuries to the lumbar region of her spine and her left shoulder under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) (*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.

MASTRO, J.P., MILLER, DUFFY and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court