

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

D32041
Y/kmb

_____AD3d_____

Submitted - June 22, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2010-09479

DECISION & ORDER

Omar Awadh, appellant, v Peterson Moronta,
etc., respondent.

(Index No. 14145/08)

Joseph Giaramita, Jr., Brooklyn, N.Y., for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated July 7, 2010, which granted the defendant's motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

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

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 Eyler*, 79 NY2d 955). The plaintiff alleged, inter alia, that he sustained certain injuries to the lumbar region of his spine as a result of the subject accident. The defendant, among other things, provided competent medical evidence establishing, prima facie, that the alleged injuries to the lumbar region of the plaintiff's spine did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Perl v Meher*, 74 AD3d 930; *Gonzales v Fiallo*, 47 AD3d 760).

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However, in opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the lumbar region of his spine constituted a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095). Furthermore, contrary to the Supreme Court's determination, he provided a reasonable explanation for the cessation of his medical treatment (*see Abdelaziz v Fazel*, 78 AD3d 1086).

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

MASTRO, J.P., FLORIO, LEVENTHAL, BELEN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court