

**Nussbaum v Bablu, 138 A.D.3d 703**

Supreme Court of New York, Appellate Division, Second Department

April 6, 2016

Counsel: Baker, McEvoy, Morrissey & Moskovits, P.C., Brooklyn, NY (Colin F. Morrissey of counsel), for appellants.

Grey & Grey, LLP, Farmingdale, NY (Sherman B. Kerner of counsel), for respondent.

Judges: RUTH C. BALKIN, J.P., SHERI S. ROMAN, JEFFREY A. COHEN, SYLVIA O. HINDS-RADIX, JJ. BALKIN, J.P., ROMAN, COHEN and HINDS-RADIX, JJ., concur.

**Opinion**

In an action, inter alia, to recover damages for personal injuries, the defendants Ahmed Ferdos Bablu and Vddin Kamal appeal from an order of the Supreme Court, Kings County (Rivera, J.), dated January 7, 2015, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 order is affirmed, with costs.

The defendants Ahmed Ferdos Bablu and Vddin Kamal (hereinafter together the moving 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, 774 NE2d 1197, 746 NYS2d 865 [2002]; Gaddy v Eyler, 79 NY2d 955, 956-957, 591 NE2d 1176, 582 NYS2d 990 [1992]). The moving defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine 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, 874 NYS2d 180 [2009]).

In opposition, however, the plaintiff raised a triable issue of fact as to whether he sustained serious injuries to the cervical and lumbar regions of his spine as a result of the subject accident (see Perl v Meher, 18 NY3d 208, 218-219, 960 NE2d 424, 936 NYS2d 655 [2011]).

Accordingly, the Supreme Court properly denied the moving defendants' motion for summary judgment dismissing the complaint insofar as asserted against them.