

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

D59174
C/afa

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Submitted - February 19, 2019

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
HECTOR D. LASALLE
ANGELA G. IANNACCI, JJ.

2018-01342

DECISION & ORDER

Juan Fernandez, respondent,
v John Noschese, et al., appellants.

(Index No. 69953/14)

Congdon, Flaherty, O’Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, NY
(Michael T. Reagan of counsel), for appellants.

Cannon & Acosta, LLP, Huntington Station, NY (June Redeker of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Joseph Farneti, J.), dated December 4, 2017. The order denied the defendants’ 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.

The plaintiff commenced this action to recover damages for personal injuries allegedly sustained by him in a motor vehicle accident on June 9, 2014. 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 denied the motion, and the defendants appeal.

The defendants made a prima facie 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 Eyster*, 79 NY2d 955, 956-957; *Sylvain v Maurer*, 165 AD3d 1203, 1204; *DiLernia v Khan*, 62 AD3d 644, 645). In opposition, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury to his left shoulder under the permanent consequential of use and significant limitation of use categories of Insurance Law § 5102(d) as a result of the accident (*see Perl v Meher*, 18 NY3d 208, 217-219).

Accordingly, we agree with the Supreme Court's determination denying the defendants' motion for summary judgment dismissing the complaint.

BALKIN, J.P., AUSTIN, LASALLE and IANNACCI, 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