

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

611

CA 09-02366

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GORSKI, JJ.

SHELIA BENSON, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

TREVOR M. LILLIE AND SUIT-KOTE CORP.,
DEFENDANTS-APPELLANTS.

HODGSON RUSS LLP, BUFFALO (KYLE C. REEB OF COUNSEL), FOR
DEFENDANTS-APPELLANTS.

LAW OFFICES OF RICHARD S. BINKO, CHEEKTOWAGA (SARA T. WALLITT OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Chautauqua County (James H. Dillon, J.), entered July 8, 2009 in a personal injury action. The order denied defendants' motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained when her vehicle, which had come to a complete stop at an intersection, was rear-ended by a vehicle driven by defendant Trevor M. Lillie and owned by defendant Suit-Kote Corp. Defendants moved for summary judgment dismissing the complaint on the ground that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) as a result of the accident, and we conclude that Supreme Court properly denied their motion. In support of the motion, defendants submitted medical records of plaintiff indicating that she had cervical and lumbar spine injuries following the accident. Although defendants contended in support of their motion that those injuries were attributable to prior accidents, they failed to submit evidence establishing as a matter of law that the injuries were entirely attributable to those prior accidents and were not exacerbated by the accident in question (*see Endres v Shelba D. Johnson Trucking, Inc.*, 60 AD3d 1481, 1483; *McKenzie v Redl*, 47 AD3d 775, 776-777).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court