

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Ortiz v. Lewkowics

2015 NY Slip Op 08718 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2015) · No. 2015-02568 · Decided November 25, 2015

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendants' motion for summary judgment in a personal-injury action. The defendants failed to establish prima facie that the plaintiffs did not sustain a serious injury under Insurance Law § 5102(d).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Ruth C. Balkin, J.P.; Cheryl E. Chambers, J.; Jeffrey A. Cohen, J.; Sylvia O. Hinds-Radix, J.
JURISDICTION	New York
DECIDED	November 25, 2015
DOCKET	2015-02568
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing a personal-injury complaint.
STANDARD OF REVIEW	On a motion for summary judgment, the defendants were required to establish prima facie that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Justin X. Lewkowics, et al. v. Edwin Ortiz, et al.

TOPICS

- personal injury
- insurance
- summary judgment
- standard of review
- appellate procedure

PRACTICE AREAS

- personal injury
- insurance
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants established prima facie that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. Whether the motion for summary judgment was properly denied regardless of the sufficiency of the plaintiffs' opposing papers.

HOLDINGS

1. The defendants failed to establish prima facie that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. When defendants fail to make the required prima facie showing, the motion must be denied regardless of the sufficiency of the plaintiffs' opposing papers.

KEY QUOTATIONS

“The defendants failed to establish, prima facie, that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.” (133 A.D.3d at 834)

“Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint, regardless of the sufficiency of the plaintiffs' opposing papers” (133 A.D.3d at 834)

FACTUAL BACKGROUND

The plaintiffs sought damages for personal injuries allegedly resulting from the subject accident. The defendants moved for summary judgment, asserting that neither plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d). The defendants failed to make the required prima facie showing.

PROCEDURAL HISTORY

The plaintiffs brought an action to recover damages for personal injuries arising from an accident. The Supreme Court, Richmond County, denied the defendants' motion for summary judgment on the ground that the plaintiffs did not sustain a serious injury under Insurance Law § 5102(d). The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345 (2002)
- Gaddy v. Eyler, 79 N.Y.2d 955, 956-957 (1992)
- Encarnacion v. Smith, 70 A.D.3d 628, 630 (2d Dep't 2010)
- Alvarez v. Dematas, 65 A.D.3d 598, 600 (2d Dep't 2009)

OPINION

PER CURIAM.

Ortiz v Lewkowics (2015 NY Slip Op 08718) Ortiz v Lewkowics 2015 NY Slip Op 08718 Decided on November 25, 2015 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on November 25, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RUTH C. BALKIN, J.P.

CHERYL E. CHAMBERS JEFFREY A. COHEN SYLVIA O. HINDS-RADIX, JJ. 2015-02568 (Index No. 100992/13) [*1]Edwin Ortiz, et al., respondents, vJustin X. Lewkowics, et al., appellants. Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Patrick J. Lawless and Ross B. Barbour of counsel), for appellants. Sgarlato & Sgarlato PLLC, Staten Island, N.Y. (Michael D. Fitzgerald of counsel), for respondents.

DECISION & ORDER In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Richmond County (Minardo, J.), dated January 22, 2015, which denied their motion for summary judgment dismissing the complaint on the ground that neither of the plaintiffs sustained 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 defendants failed to establish, prima facie, that the plaintiffs 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).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint, regardless of the sufficiency of the plaintiffs' opposing papers (see *Encarnacion v Smith*, 70 AD3d 628, 630; *Alvarez v Dematas*, 65 AD3d 598, 600). BALKIN, J.P., CHAMBERS, COHEN and HINDS-RADIX, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court