

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

Mendez v. Mitchell

125 A.D.3d 618 (N.Y. App. Div. 2015) · No. 2014-07867 · Decided February 4, 2015

OPINION

PER CURIAM.

Mendez v Mitchell (2015 NY Slip Op 00855) Mendez v Mitchell 2015 NY Slip Op 00855 Decided on February 4, 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 February 4, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

L. PRISCILLA HALL SHERI S. ROMAN JEFFREY A. COHEN BETSY BARROS, JJ. 2014-07867 (Index No. 8201/11) [*1]Reina S. Mendez, respondent, et al., plaintiff, vAnthony J. Mitchell, et al., appellants. Gallo Vitucci & Klar, LLP, New York, N.Y. (Kimberly A. Ricciardi of counsel), for appellants. William Schwitzer & Associates, P.C., New York, N.Y. (Andrea M. Arrigo of counsel), for respondent.

DECISION & ORDER In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Velasquez, J.), dated June 10, 2014, which denied their motion for summary judgment dismissing the complaint insofar as asserted by the plaintiff Reina S. Mendez on the ground that Mendez 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 defendants failed to meet their prima facie burden of showing that the plaintiff Reina S. Mendez 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).

The papers submitted by the defendants, inter alia, failed to adequately address Mendez's claim, set forth in the bill of particulars, that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) (see *Che Hong Kim v Kossoff*, 90 AD3d 969). Since the defendants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by Mendez in opposition were sufficient to raise a triable issue of fact (see *id.* at 969).

Therefore, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint insofar as asserted by Mendez. RIVERA, J.P., HALL, ROMAN,

COHEN and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court

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