

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

Min Kyu Jun v. Azam

2017 N.Y. Slip Op. 06931 (App. Div. 2017) · No. 2015-12641 · Decided October 4, 2017

SUMMARY

The Appellate Division, Second Department dismissed Hyo Eun Kwak's appeal from an order granting defendants summary judgment on the ground that she did not sustain a serious injury under Insurance Law § 5102(d). The court held that the right to directly appeal the order terminated upon entry of judgment, and that the issues were reviewable on appeal from the judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Leonard B. Austin; Sheri S. Roman; Sylvia O. Hinds-Radix; Francesca E. Connolly
JURISDICTION	New York
DECIDED	October 4, 2017
DOCKET	2015-12641
DISPOSITION	dismissed
PROCEDURAL POSTURE	Hyo Eun Kwak appealed from an order granting defendants summary judgment dismissing the complaint insofar as asserted by her. The Appellate Division dismissed the appeal from the order because a judgment had subsequently been entered.
PRECEDENTIAL VALUE	published
PARTIES	Hyo Eun Kwak v. Rizwan Azam, et al.

TOPICS

final judgment rule appellate procedure summary judgment personal injury insurance

PRACTICE AREAS

civil procedure personal injury insurance

QUESTIONS PRESENTED

1. Whether the direct appeal from the interlocutory order granting summary judgment remained appealable after entry of a judgment in the action.
2. Whether the issues raised on the appeal from the order could be reviewed on the appeal from the subsequently entered judgment.

HOLDINGS

1. The direct appeal from the order granting summary judgment had to be dismissed because the right to take a direct appeal from that order terminated upon entry of the judgment.

KEY QUOTATIONS

“The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of a judgment in the action on April 25, 2016”

“The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment”

FACTUAL BACKGROUND

The action sought damages for personal injuries arising from a subject accident. Defendants moved for summary judgment, asserting that Kwak did not sustain a serious injury within the meaning of Insurance Law § 5102(d). The Supreme Court granted that motion as to Kwak.

PROCEDURAL HISTORY

The Supreme Court, Queens County, granted defendants' motion for summary judgment on the ground that Kwak did not sustain a serious injury within the meaning of Insurance Law § 5102(d). A judgment was entered on April 25, 2016. The Appellate Division dismissed the direct appeal from the earlier order, explaining that the issues raised were reviewable on the appeal from the judgment, decided separately.

DISPOSITION

dismissed

CASES CITED

- Matter of Aho, 39 N.Y.2d 241, 248

OPINION

PER CURIAM.

Min Kyu Jun v Azam (2017 NY Slip Op 06931) Min Kyu Jun v Azam 2017 NY Slip Op 06931 Decided on October 4, 2017 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 October 4, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

LEONARD B. AUSTIN SHERI S. ROMAN SYLVIA O. HINDS-RADIX FRANCESCA E. CONNOLLY, JJ. 2015-12641 (Index No. 702950/12) [*1]Min Kyu Jun, plaintiff, Hyo Eun Kwak, appellant, vRizwan Azam, et al., respondents. Sim & Record, LLP, Bayside, NY (Sang J. Sim of counsel), for appellant. Nancy L. Isserlis (Saretsky Katz & Dranoff, LLP, New York, NY [Gary J. Levy], of counsel), for respondents.

DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff Hyo Eun Kwak appeals from an order of the Supreme Court, Queens County (Lane, J.), entered December 18, 2015, which granted the defendants' motion for summary judgment dismissing the complaint insofar as asserted by her on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the appeal is dismissed, without costs or disbursements. The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of a judgment in the action on April 25, 2016 (see Matter of Aho, 39 NY2d 241, 248).

The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (Min Kyu Jun v Azam, _____ AD3d _____ [Appellate Division Docket No. 2016-05710; decided herewith]; see CPLR 5501[a][1]; Matter of Aho, 39 NY2d at 248). RIVERA, J.P., AUSTIN, ROMAN, HINDS-RADIX and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court