

63 A.D.3d 450, 881 N.Y.S.2d 54, 2009 N.Y. Slip Op. 04358
(Cite as: 63 A.D.3d 450, 881 N.Y.S.2d 54)

Supreme Court, Appellate Division, First Department, New York.
Kwaku PEPRAH, Plaintiff-Appellant,
v.
Curtis McDONALD, Defendant-Respondent.
June 4, 2009.

Background: Plaintiff appealed order of the Supreme Court, Bronx County, Kenneth L. Thompson, J., which granted defendant's motion for summary judgment and denied plaintiff's cross motion for summary judgment.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) summary judgment evidence was sufficient to establish that plaintiff's injury was not serious within meaning of the No-Fault Law, and
- (2) the affidavit of plaintiff's medical expert was insufficient to raise triable issue as to whether plaintiff's injury was serious within meaning of the No-Fault Law.

Affirmed.

West Headnotes

[1] Judgment 228 ↪185.3(21)

228 Judgment

228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(21) k. Torts. Most Cited Cases

Summary judgment evidence was sufficient, in personal injury action arising out of a motor vehicle accident, to establish prima facie that plaintiff's injury was not serious within meaning of the No-Fault Law; affidavit of defendant's medical expert stated that his examination of plaintiff disclosed no objective medical findings supporting plaintiff's serious injury claims. McKinney's Insurance Law §

5102(d).

[2] Judgment 228 ↪185.3(21)

228 Judgment

228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(21) k. Torts. Most Cited Cases

Summary judgment evidence, consisting of the affidavit of plaintiff's medical expert, was insufficient, in personal injury action arising out of a motor vehicle accident, to raise triable issue of fact as to whether plaintiff's injury was serious within meaning of the No-Fault Law; expert's affidavit failed to adduce evidence of serious injury based upon objective medical findings made within a reasonable time after the accident. McKinney's Insurance Law § 5102(d).

*54 Barry Siskin, New York, for appellant.

Boeggeman, George, Corde, P.C., White Plains (Cynthia Dolan of counsel), for respondent.

ANDRIAS, J.P., BUCKLEY, MOSKOWITZ, DEGRASSE, RICHTER, JJ.

Order, Supreme Court, Bronx County (Kenneth L. Thompson, J.), entered on or about November 27, 2007, which granted defendant's motion 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), and denied plaintiff's cross motion for summary judgment, unanimously affirmed, without costs.

[1][2] The motion court correctly determined that defendant established his prima facie entitlement to summary judgment with the affidavit of his medical expert, Dr. Nathan, whose examination of plaintiff disclosed no objective medical findings supporting

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his serious injury claims (*see Shinn v. Catanzaro*, 1 A.D.3d 195, 197, 767 N.Y.S.2d 88 [2003]). Plaintiff, in response, failed to raise a triable issue of fact precluding summary judgment. The affidavit of plaintiff's medical expert was insufficient in that it failed to adduce evidence of serious injury based upon objective medical findings made within a reasonable time after the accident (*see *55 e.g. Santana v. Khan*, 48 A.D.3d 318, 851 N.Y.S.2d 515 [2008]).

We have considered plaintiff's remaining contentions and find them unavailing.

N.Y.A.D. 1 Dept.,2009.
Peprah v. McDonald
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