

Gluz v Herskowitz

2018 NY Slip Op 32341(U)

September 21, 2018

Supreme Court, Kings County

Docket Number: 503390/17

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

_____ x
ALEXSANDR GLUZ and ALLA GLUZ,

Plaintiffs,

-against-

MINDY HERSKOWITZ and RENA B. HERSKOWITZ,

Defendants.
_____ x

DECISION / ORDER

Index No. 503390/17

Motion Seq. No. 2

Date Submitted: 7/26/18

Cal No. 21

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>27-47</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>60-71</u>
Reply Affirmation.....	<u>73-76</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

This is a personal injury action arising out of a motor vehicle accident on April 11, 2016 at the intersection of Ocean Parkway and Avenue Z in Brooklyn, New York. Plaintiffs' bill of particulars alleges that, as a result of the accident, Aleksandr Gluz sustained a rotator cuff tear of the left shoulder, herniated discs at C3-C4 and L5-S1, bulging discs at C4-C5, C5-C6 and L4-L5, with radiculopathy in his cervical and lumbar spine and various sprains and strains. Plaintiff Alla Gluz claims she sustained a Baker's cyst to the right knee, a herniated disc at C5-C6 and bulging discs at C4-C5, C6-C7, L2-L3, L3-L4 and L4-L5, with radiculopathy in her cervical and lumbar spine, carpal tunnel syndrome in her left wrist, and various sprains and strains.

Defendants contend that plaintiffs did not sustain a "serious injury" as a result of this accident. Defendants have made a prima facie showing of their entitlement to summary judgment with the affirmed report of Edward S. Crane, M.D., and plaintiffs' own EBT testimony.

Edward S. Crane, M.D., an orthopaedic surgeon, examined the plaintiff Aleksandr Gluz on February 7, 2018, and found Aleksandr Gluz to have full range of motion in his cervical and lumbar spine and left shoulder and reports normal results on all tests. Dr. Crane concludes that Aleksandr Gluz has no objective evidence of any orthopedic residuals from the accident of April 11, 2016.

Dr. Crane also examined the plaintiff Alla Gluz on February 7, 2018, and found full range of motion in her cervical and lumbar spine, left wrist and right knee and reports normal results on all tests, with slight tenderness in her left wrist and right knee. Dr. Crane concludes that Alla Gluz has no objective evidence of any orthopedic residuals from the accident of April 11, 2016 (*see Paul v Allstar Rentals, Inc.*, 22 AD3d 476, 477 [2d Dept 2005] ["The affirmations of the respondents' orthopedist and neurologist which indicated that the plaintiff had a full range of motion were sufficient to make a prima facie showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d)"].

In addition, Aleksandr Gluz's testified at his EBT that he missed no time from work as a result of the subject accident, and his bill of particulars states he was not confined to bed or home after the accident. Alla Gluz was not working at the time of the accident, and after the accident, she continued to care for her son, with some help from her mother-in-law, and to do housework and light shopping. Her bill of particulars states

that she was not confined to bed or home after the accident. Thus, plaintiffs acknowledge that they were not prevented from performing substantially all of their daily activities for 90 out of the first 180 days after the accident (see *Strenk v Rodas*, 111 A.3d 920 [2d Dept 2013]; *Hamilton v Rouse*, 46 AD3d 514, 516 [2d Dept 2007]).

However, the court finds that plaintiff Aleksandr Gluz has overcome the motion and raised a triable issue of fact as to whether he sustained a "serious injury," based upon the May 7, 2018 affirmed report of Frida Goldin, M.D., who examined plaintiff on April 30, 2018. Dr. Goldin, a board-certified specialist in physical medicine and rehabilitation found decreased ranges of motion in Aleksandr Gluz's left shoulder and his spine and diagnoses plaintiff: "status post cervical sprain/strain/discogenic derangement, status post lumbar spine sprain/strain/discogenic derangement, status post left shoulder sprain/impingement syndrome, and status post left wrist sprain/strain, resolved." Dr. Goldin concludes that the injuries to the plaintiff's cervical spine, lumbar spine and left shoulder are causally related to the April 11, 2016 motor vehicle accident and are chronic and permanent (see *Chul Koo Jeong v Denike*, 137 AD3d 1189, 1190 [2d Dept 2016]).

Similarly, Alla Gluz has overcome the motion and raised a triable issue of fact as to whether she sustained a "serious injury," based upon the May 24, 2018 affirmed report of Frida Goldin, M.D., who examined Alla Gluz on April 30, 2018. Dr. Goldin found decreased ranges of motion in Alla Gluz's cervical spine and diagnoses plaintiff: "status post cervical sprain/strain/discogenic derangement, status post thoracic spine sprain/strain, status post lumbar spine sprain/strain/discogenic derangement, status post left wrist strain and status post right knee contusion/Baker's cyst." She concludes

that the injuries to the plaintiff's cervical spine, lumbar spine, left wrist and right knee are chronic and permanent and are causally related to the April 11, 2016 motor vehicle accident (see *Chul Koo Jeong v Denike*, 137 AD3d 1189, 1190 [2d Dept 2016]).

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the decision and order of the court.

Dated: September 21, 2018

ENTER:



Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court