

Pratts v Reyes

2021 NY Slip Op 33858(U)

January 13, 2021

Supreme Court, Kings County

Docket Number: Index No. 511022/2018

Judge: Lara J. Genovesi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 13th day of January 2021.

PRESENT:

HON. LARA J. GENOVESI,
J.S.C.

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PROVIDENCIA PRATTS,

Index No.: 511022/2018

Plaintiff,

DECISION & ORDER

-against-

LUIS REYES & TOYOTA LEASE TRUST,
Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed _____	79 - 91
Opposing Affidavits (Affirmations) _____	99 - 105
Reply Affidavits (Affirmations) _____	107 - 110

Defendant Luis Reyes moves (sequence number five) for summary judgment on the grounds that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d). Plaintiff commenced this action for personal injuries as the result of a motor vehicle accident on June 30, 2017. In the bill of particulars, plaintiff alleged injuries to her left knee tear, left shoulder, cervical and lumbar spine (*see* NYSCEF Doc. # 86 at ¶ 5). Plaintiff underwent arthroscopic surgery on her left knee after the accident. Plaintiff

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further alleges that the injuries sustained meet the following categories of Insurance Law § 5102: (1) significant disfigurement, (2) permanent consequential limitation, (3) a significant limitation, and (4) a non-permanent medically determined injury which prevented him from his usual and customary activities for 90 out of the first 180 days following the accident (*see id.* at ¶ 15).

Defendant provided the sworn medical report of Dr. Dana A. Mannor, M.D., who conducted an orthopedic examination on November 21, 2019 and found that plaintiff had full range of motion in her cervical and lumbar spine. Although the doctor opined that passive range of motion is full in plaintiff's left shoulder and knee, the report provides that her left shoulder's "external rotation (with the arm in 0 degrees of abduction) to 0 degrees (90 degrees normal)" (NYSCEF Doc. # 87). The doctor opined that plaintiff's left shoulder, cervical and lumbar sprain/strain were resolved and knee is healed and causally related the plaintiff's injuries to the accident (*see id.*). Defendant further provided the sworn medical report of Dr. Michael J. Carciente, M.D., who conducted a neurological examination on October 25, 2019, and opined that there were no objective neurological findings (*see* NYSCEF Doc. # 88). Defendant provided the sworn medical report of Dr. Melissa Sapan Cohn, M.D., who reviewed x-ray and CT scans of plaintiff's back, shoulders and knees and opined that plaintiff has degeneration (*see* NYSCEF Doc. # 89).

Defendants failed to meet their burden and establish that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d). Defendants failed to establish that plaintiff did not sustain a permanent consequential or significant limitation. Dr. Mannor's report showed that plaintiff sustained loss in range of motion in external


rotation of her left shoulder. Defendant contends that they “placed causality at issue” by providing the radiological review of Dr. Cohn, who opines that plaintiff has degeneration. However, defendant also provided the report of Dr. Mannor who causally related the injuries to the accident. Further, “[t]he papers submitted by the defendant failed to eliminate triable issues of fact regarding the plaintiff’s claim, set forth in the bill of particulars, that he sustained a serious injury under the 90/180–day category of Insurance Law § 5102(d)” (*Reid v. Edwards- Grant*, 186 A.D.3d 1741, 129 N.Y.S.3d 798 [2 Dept., 2020]). Defendant relies on plaintiff’s deposition transcript to establish that she did not sustain a serious injury under this category (*see* NYSCEF Doc. # 80 at ¶ 29). However, plaintiff testified that she rode her bicycle, was able to walk several blocks and stand for extended periods of time prior to the accident and since the accident she is unable to ride her bicycle, sit or stand for an extended time and therefore she also cannot ride a subway (*see* NYSCEF Doc # 90, Plaintiff’s EBT, p 125-129, 132).

As defendants did not meet their burden, this Court need not examine the sufficiency of plaintiff’s opposition papers. However, even assuming, *arguendo*, that defendants met their burden, plaintiff provided credible medical evidence sufficient to raise a triable issue of fact on the significant limitation and permanent consequential limitation categories of Insurance Law 5102(d). The sworn report of Dr. Donald Goldman demonstrates that in a recent examination on January 7, 2020, plaintiff had measured range of motion loss up to 60% in the cervical spine, up to 44% in the left shoulder and up to 78 percent in the lumbar spine at an examination on January 7, 2020. Dr. Goldman further causally relates the loss to this accident (*see* NYSCEF Doc. # 99 at p 5-6).

Accordingly, defendants' motion for summary judgment (sequence number five) pursuant to Insurance Law § 5102(d) is denied.



ENTER:



Hon. Lara J. Genovesi
J.S.C.

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KINGS COUNTY CLERK'S OFFICE

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