

Hinckson v Soyez Franc Trans Inc.

2025 NY Slip Op 33998(U)

July 22, 2025

Supreme Court, Queens County

Docket Number: Index No. 703196/2019

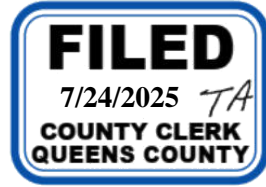
Judge: Mojgan C. Lancman

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Short Form Order

NEW YORK SUPREME COURT- QUEENS COUNTY



PRESENT: HON. MOJGAN C. LANCMAN

-----x IAS PART 20
ANDREW HINCKSON,

Plaintiff,

-against-

SOYEZ FRANC TRANS INC., LAUREL Y. SORBI,
MOHAMED F. MUNIEM, UBER TECHNOLOGIES INC., Motion Cal. No.: 13
UBER USA LLC, and RASIER-NY LLC,

Defendants.
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The e-filed papers bearing NYSCEF Doc. Nos. 57-89 were read on: (1) the motion filed by the defendants Soyez Franc Trans Inc. (“Soyez”) and Laurel Y. Sorbi (“Sorbi”) for summary judgment; and (2) the cross-motion filed by the defendant Mohamed F. Muniem (“Muniem”) for summary judgment (collectively, the “Defendants”).

The plaintiff, Andrew Hinckson (the “Plaintiff”), commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the “Accident”). Presently before the Court are a motion and a cross-motion for summary judgment dismissing the complaint. The applications are grounded on the assertion that the Plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 [d]. For the following reasons, the motions are granted in part and denied in part.

I. Factual Background

The Accident occurred on December November 6, 2018 in Queens, New York. The Plaintiff was a passenger in one of the two vehicles that were involved in the Accident.

The bill of particulars alleges, *inter alia*, that the Plaintiff sustained injuries to the: left knee; left leg; left knee; left shoulder, which was operated on arthroscopically on February 19, 2019; head; cervical spine; and lumbar spine.

The bill of particulars further asserts that the Plaintiff sustained a serious injury under the following categories: “significant disfigurement; permanent loss of use of a body organ, member, function or system; permanent consequential limitation or use of a body organ or member; significant limitation of use of a body function or system;” and 90/180 days.

II. Discussion

Since there is no evidence in the record that the Plaintiff sustained the permanent loss of use of a body organ, member, function or system, his claims under this category are dismissed (*see Oberly v Bangs Ambulance Inc.*, 96 NY2d 295 [2001]).

The claim under the significant disfigurement category is dismissed because there is no evidence that the Plaintiff suffered an injury that a “reasonable person viewing the injury would have to regard it as unattractive or objectionable, or as the object of pity or scorn” (*Knight v M & M Sanitation Corp.*, 122 AD3d 683, 684 [2d Dept 2014] [internal quotation marks and citations omitted])

The Plaintiff’s claims under the 90/180-day category are also dismissed. Here, the Plaintiff, who was unemployed at the time of the Accident, testified at his deposition that he was confined to bed for approximately one week after the Accident. The Plaintiff also fails to show that “he was curtailed from performing his usual activities to a great extent” (*Peart v Carreras*, 227 AD3d 479, 480 [1st Dept 2024] [citation omitted and emphasis added]).

The Court now turns to the serious injury claims under the permanent consequential limitation and the significant limitation of use categories.

The Court’s function on a summary judgment motion “is not to resolve issues of fact or determine matters of credibility, but merely to determine if such issues exist” (*114 Woodbury Realty, LLC v 10 Bethpage Rd.*, LCC, 178 AD3d 757, 760 [2d Dept 2019] [citations omitted]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

The Defendants rely, *inter alia*, upon the affirmed report of Dr. Thomas Nipper (“Dr. Nipper”), their expert orthopedist. Dr. Nipper arrived at the following impressions after examining the Plaintiff: “[a]lleged cervical and lumbar sprains resolved; [s]tatus post left shoulder arthroscopy resolved; [a]lleged left knee sprain resolved; [and] [n]o evidence of injury to the left lower extremity.” The physician also concluded that the Plaintiff had normal range of motion relative to cervical spine, lumbar spine, left shoulder and left knee. Dr. Nipper also found that chest inspiration and expiration was “full and pain free,” and that there was “no tenderness over the ribs.”

The Defendants also rely upon affirmed reports from their expert radiologist, Dr. Scott A. Springer (“Dr. Springer”), who opined that diagnostic studies of the Plaintiff’s cervical spine and chest did not reveal any “posttraumatic changes causally related to the [Accident].”

Since neither Dr. Nipper nor Dr. Springer address the Plaintiff’s injury claims relative to the head, the branch of the motion to dismiss said claims is denied. Here, the Defendants fail to meet their burden of establishing *prima facie* entitlement to summary judgment with respect to

thereto. The application to dismiss these injury claims is thus denied irrespective of the Plaintiff's opposition (*see Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

The Court shall now address the Plaintiff's other injury claims. In opposition, the Plaintiff submits, *inter alia*, the affirmed report of Dr. Laxmidhar Diwan ("Dr. Diwan"). During an examination conducted on December 19, 2024, the physician found losses in range of motion relative to the Plaintiff's cervical spine, lumbar spine, left shoulder, right shoulder and left knee. Dr. Diwan concluded that the injuries to said body parts are causally related to the Accident.

The Plaintiff also submits the affirmation of Dr. Stanley Ikezi (Dr. Ikezi"), who last examined the Plaintiff on November 20, 2024. The physician found losses of range of motion with respect to the cervical spine, lumbar spine, left shoulder and right shoulder, and opined that the injuries thereto are causally related to the Accident.

The Court declines to consider the affirmed report of Dr. Farshad Hannanian that is submitted in opposition because it is stated therein that: "[a]t the last exam on November 18, 2024, I had the opportunity to evaluate Mrs. Mandal, a 43 year-old married male" [emphasis added]).

The "Radiologist Affirmation" of Dr. William A. Weiner shall also not be considered since it is unsigned and, in any event, does not consider the issue of causation.

The Defendants' application to dismiss the permanent consequential limitation and the significant limitation of use categories claims relative to the cervical spine, lumbar spine, left shoulder, right shoulder and left knee is denied for various reasons.

First, the parties' competing admissible evidence relative to causation and losses in range of motion "constitute[s] the classic battle of the experts" (*Sason v Dykes Lumbar Company, Inc.*, 221 AD 3d 491, 492 [1st Dept 2023], which "[is] properly left to a jury for resolution" (*Thomas v Eckhert*, 229 AD3d 1237, 1239 [4th Dept 2024] [internal quotation marks and citations omitted]).

Second, and in any event, the record is clear that sharply disputed issues of fact exist with respect to the permanent consequential limitation and the significant limitation of use categories, as evidenced, *inter alia*, by the affirmed reports of Drs. Nipper and Springer on one hand and the affirmed reports of Drs. Diwan and Ikezi on the other hand (*see Oputa v New York City Transit Authority*, 216 AD3d 461 [1st Dept 2023]; *Hobbs v MTA Bus Company*, 211 AD3d 471 [1st Dept 2022]).

III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the motion filed by Soyez and Sorbi for summary judgment and the cross-motion for summary judgment filed by Muniem are granted in part and denied in part; and it is further,

ORDERED, that the motion and cross-motion are granted to the extent that the Plaintiff's claims under the following serious injury categories are dismissed: (1) permanent loss of use of a

body organ, member, function or system; (2) significant disfigurement; and (3) 90/180-day; and it is further,

ORDERED, that the motion and cross-motion are otherwise denied; and it is further,

ORDERED, that the Soyez and Sorbi shall serve a copy of this Order with Notice of Entry on all other parties via NYSCEF by August 22, 2025.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
July 22, 2025



MOJGAN C. LANCMAN, J.S.C.

