

Sookdeo v Girgin

2026 NY Slip Op 31091(U)

March 18, 2026

Supreme Court, Kings County

Docket Number: Index No. 525999/2024

Judge: Wavny Toussaint

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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of March, 2026.

P R E S E N T:
HON. WAVNY TOUSSAINT,
Justice.

RAMISH SOOKDEO,

Plaintiff,

-against-

Index No.: 525999/2024

DECISION AND ORDER

ISMAIL GIRGIN,

Defendant.

The following papers numbered 1 to read herein	Papers Numbered
Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	<u>13-23</u>
Cross Motion and Affidavits (Affirmation) Annexed	<u>28-33</u>
Answers/Opposing Affidavits (Affirmations)	<u>34-35</u>
Reply Affidavits (Affirmations)	<u> </u>
Affidavit (Affirmation)	<u> </u>
Other Papers	<u> </u>

Upon the foregoing papers, defendant Ismail Girgin (defendant) moves (Seq. 01) for an order, pursuant to Insurance Law §§ 5104[a] and 5102[d], granting summary judgment dismissing the complaint on the grounds that plaintiff Ramish Sookdeo (plaintiff) did not sustain a serious injury as a result of the subject accident. Plaintiff opposes the motion.

Background

In this personal injury action, plaintiff asserts that around 8:00 a.m. on March 4, 2024, he was traveling eastbound on Linden Boulevard at or near its intersection with

Amboy Street in Brooklyn, New York, when his vehicle was struck by the vehicle operated by defendant, which allegedly ran a red-light traffic signal.

A summons and complaint were filed on September 25, 2024. Issue was joined when defendant interposed an answer on October 29, 2024.

The Parties' Contentions

On the motion, defendant argues that the relevant Independent Medical Examination (IME) and other reports prepared by the various examining and treating physicians confirm plaintiff sustained merely non-serious, soft tissue injuries as a result of the accident and that in particular, the claimed injuries to plaintiff's neck and spine were degenerative, pre-existing conditions.

In opposition, plaintiff contends the affirmed narrative and treatment reports of his treating chiropractor and those of reviewing radiologists and interventional pain management specialist, taken together, substantiate the "serious" injuries to his neck, spine and left shoulder (i.e., rotator cuff tear); and thereby raise questions of fact preventing summary judgment.

In reply, defendant argues the affirmed narrative report of plaintiff's chiropractor is inadmissible, as CPLR § 2106 does not permit affirmations by chiropractors. Defendant further argues the submissions of plaintiff's reviewing radiologists are not supported by objective evidence and thus insufficient to rebut the *prima facie* showing. Based on the foregoing, defendant argues plaintiff cannot demonstrate he sustained a serious injury, warranting dismissal of the complaint.

Discussion

Standard of Review

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*Murray v Community House Housing Development Fund*, 223 AD3d 675, 677 [2d Dept 2024]; see also *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The issue of whether a claimed injury falls within the statutory definition of "serious injury" is a question of law for the court, which may be decided on a motion for summary judgment (*Zecca v Riccardelli*, 293 AD2d 31, 33 [2d Dept 2002], citing *Licari v Elliott*, 57 NY2d 230, 238 [1982]).

Here, defendant bears the initial burden of establishing a *prima facie* case, by the submission of evidentiary proof in admissible form, that plaintiff did not sustain a serious injury as a result of the subject accident (*Moon v Ramirez*, 229 AD3d 481, 482 [2d Dept 2024]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Id.*; *Winegrad*, 64 NY2d at 853). If defendant makes a *prima facie* showing, the burden shifts to plaintiff to submit evidence in admissible form sufficient to create a material issue of fact necessitating a trial (*Alvarez*, 68 NY2d at 324).

The Insurance Law

Insurance Law § 5104 [a] states in pertinent part:

"in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, **except in the case of a serious injury**, or for basic economic loss" (emphasis supplied).

Insurance Law § 5102 [d] states in pertinent part:

“‘Serious injury’ means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment”.

At issue here is whether the injuries alleged by plaintiff fit within any of the categories specified in § 5102 [d].

Motion Seq. 01

As stated in the Bill of Particulars, plaintiff alleges the following injuries: cervical and lumbar derangement caused by trauma; cervical herniated disc at level C3-C4, C5-C6 and C6-C7 with nerve impingement; lumbar herniated disc at level L5-S1 with nerve impingement; left shoulder tear (i.e., rotator cuff tear); impingement of left and right shoulder; left cervical radiculopathy at C4-C5; and bilateral shoulder pain and numbness down arms and legs, among others (NYSCEF Doc. No.17 at par. 12). Defendant alleges these injuries are not causally related to the accident and, in any event, do not meet the serious injury threshold.

Defendant's proof on the motion, *inter alia*, consisted of the Verified Bill of Particulars, plaintiff's February 10, 2025 deposition transcript, the IME report of orthopedic surgeon Dr. Hugh Selznick (Dr. Selznick), dated March 10, 2025, and the May

28, 2025 reports of radiologist Dr. Sheldon P. Feit (Dr. Feit) (*See* NYSCEF Doc. No. 21).¹ Dr. Feit reviewed the May 14, 2024 magnetic resonance imaging (MRI) scans of plaintiff's cervical spine and left shoulder, and the May 28, 2024 MRI scans of plaintiff's lumbosacral spine and right shoulder -- all taken within three months of the accident.

Dr. Selznick examined plaintiff at his office on March 10, 2025. He also stated he reviewed the Verified Bill of Particulars; the treatment report of plaintiff's chiropractor Dr. Scott H. Leist (Dr. Leist) dated May 8, 2024 and a second treatment report purportedly dated November 18, 2024; all of plaintiff's MRI scans; the office visit reports from Bay Ridge Orthopedic Associates, PC, dated April 9, 2024 and July 30, 2024; progress notes from Columbia Medical of New York, for the period July 22, 2024 – November 18, 2024; the electromyography and nerve conduction velocity (EMG/NCV) testing report prepared by plaintiff's interventional pain management specialist Dr. Moin U. Mallhi (Dr. Mallhi), dated July 29, 2024; and plaintiff's treatment records from Kings Highway Chiropractic Office (Dr. Leist's practice), for the period April 5, 2024 – November 27, 2024 (*See* NYSCEF Doc. No. 20 at p. 2).²

¹ The reports are combined into a single document. For ease of reference, the Court views the report as an eleven (11) page document (excluding the exhibit cover page) and cites to each respective page as necessary.

² Though the unaffirmed May 8, 2024 treatment report of plaintiff's chiropractor Dr. Leist and the unaffirmed July 29, 2024 EMG/NCV testing report of plaintiff's interventional pain management specialist Dr. Mallhi were not attached to or submitted with Dr. Selznick's IME report, they were considered by the Court, as a defendant may submit unsworn medical reports and records of the injured plaintiff's physicians in support of a motion for summary judgment in order to demonstrate the lack of a serious injury (*Kearse v New York City Transit Authority*, 16 AD3d 45, 52, fn.1 [2d Dept 2005]). These same reports were submitted by plaintiff in opposition to defendant's motion.

The various other reports and scans reviewed and relied upon by Dr. Selznick to form the conclusions set forth in his IME report, including the purported November 18, 2024 treatment report of Dr. Leist, the reports from Bay Ridge Orthopedic Associates, the progress notes from Columbia Medical of New York, the EMG/NCV testing report and plaintiff's treatment reports from Kings Highway Chiropractic Office, also were not attached or submitted with Dr. Selznick's report. Plaintiff did not rely on these reports in opposition to defendant's motion.

Based on the examination of plaintiff and his “review of the available medical records”, Dr. Selznick determined, by using a goniometer (measuring against range of motion degrees according to the AMA Guidelines 5th Edition), that plaintiff did not exhibit any range of motion limitations to his cervical and lumbosacral spine or exhibit any bilateral shoulder deltoid atrophy (*Id.*, at ps. 2-3). He further determined plaintiff demonstrated no swelling or effusion to his elbows, with likewise findings to his wrists, and diagnosed plaintiff as having suffered sprains/strains to his cervical and lumbar spine, all of which have resolved, with no “clinical evidence of carpal tunnel syndrome or ulnar tunnel syndrome” (*Id.*, at p. 3). Accordingly, Dr. Selznick concluded plaintiff “did not sustain an injury or impairment which prevented [him] from substantially performing all of the material acts which constitute [his] usual and customary daily activities for not less than 90 days during the 180 days immediately following the [accident]” (*Id.*, at p. 4), though he did determine that plaintiff’s injuries were “causally related to the accident of March 4, 2024” (*Id.*).

With respect to plaintiff’s left shoulder, Dr. Feit determined there was “no MRI evidence of rotator cuff tear”, merely “mild impingement on the supraspinatus muscle secondary to hypertrophic change at the acromioclavicular joint” (NYSCEF Doc. No. 21 at p. 3). He also determined plaintiff’s cervical spine indicates bulges at C3-C4, C4-C5, C5-C6 and C6-C7 but no herniations, with all indications due to “degenerative spondylitic change” (*Id.*, at p. 1). As to the lumbosacral spine, Dr. Feit determined plaintiff exhibited no signs spondylolisthesis (i.e., misaligned vertebra) but indicated mild bulges at L2-L3 and L3-L4 and bulges with compression on the thecal sac at L5-S1 and L4-L5, but no herniations (*Id.*, at p. 5). He found the MRI of plaintiff’s right shoulder generally unremarkable, with no evidence of a

rotator cuff tear (*Id.*, at p. 7). Overall, Dr. Feit concluded plaintiff suffered “no posttraumatic changes” and “no abnormalities causally related to the [subject] accident” (*Id.*, at ps. 2, 4, 6 and 8). Finally, plaintiff’s deposition testimony indicates he “did not miss any time from work”, “was not confined to home post-accident”, and did “not have any future medical appointments scheduled as the time of his deposition” (*See* the Angelino Affirmation, NYSCEF Doc. No.14 at par. 8, citing to the relevant deposition pages).

Upon review of the submitted proof, the Court finds defendant met his *prima facie* burden of showing that the plaintiff did not sustain a serious injury under the permanent loss of use, permanent consequential limitation of use, significant limitation of use, or the 90/180-day categories of Insurance Law § 5102[d], as a result of the accident (*Cavitolo v Broser*, 163 AD3d 913, 913-914 [2d Dept 2018]; *Hoque v Achiron*, 117 AD3d 802, 802 [2d Dept 2014]). As defendant met his burden, plaintiff was obligated to present admissible proof to raise a triable issue of fact in opposition to the *prima facie* showing (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Plaintiff’s proof submitted in opposition consisted, *inter alia*, of the narrative report from his treating chiropractor Dr. Leist, dated June 1, 2025;³ the treatment report prepared by Dr. Leist, dated May 8, 2024;⁴ the reports of radiologist Dr. Simon Ryoo (Dr. Ryoo) and radiologist Dr. Charles DeMarco (DeMarco), both dated June 6, 2025;⁵ and the EMG/NCV testing report of Dr. Mallhi.

³ Defendant does not address the admissibility of the June 1, 2025 report in the reply.

⁴ Plaintiff does not reference or rely upon the purported additional November 18, 2024 treatment report, identified by Dr. Selznick as one of the reports he reviewed.

⁵ Like Dr. Selznick, Dr. DeMarco reviewed plaintiff’s May 14, 2024 MRI scans and Dr. Ryoo reviewed plaintiff’s May 28, 2024 MRI scans.

Notwithstanding defendant's argument to the contrary, Dr. Leist's narrative report dated June 1, 2025 is admissible and was considered by the Court, even though it is not in affidavit form. As revised effective January 1, 2024, CPLR § 2106 now authorizes the use of an affirmation by "any person wherever made" (*See* CPLR § 2106 as amended by L. 2023, ch 559 [eff Jan. 1, 2024]; *see also Matter of Sweet v Fonvil*, 227 AD3d 849, 851 [2d Dept 2024]);⁶ The Court also considered the otherwise inadmissible unaffirmed and unsigned treatment report of Dr. Leist, dated May 8, 2024, and the unaffirmed EMG/NCV testing report prepared by Dr. Mallhi, as these reports were relied on by defendant. Defendant opened the door for plaintiff to rely on these same unsworn and/or unaffirmed reports in opposition to the motion since Dr. Selznick reviewed them in preparation of his IME report, submitted in support of defendant's motion (*Miles v Hall*, 214 AD3d 783, 784 [2d Dept 2023] [citations omitted]). Defendant also effectively waived any objection to the admissibility of the EMG/NCV report (*Trigoso v Correa*, 150 AD3d 1041, 1044 [2d Dept 2017]; *Field v Waldbaum, Inc.*, 35 AD3d 652, 653-654 [2d Dept 2006]).

Having considered the submitted proof, the Court finds merit in plaintiff's opposition. Dr. Ryoo and Dr. Demarco both rely, respectively, on the same underlying MRI scans as reviewed and relied upon by defendant's reviewing radiologist, Dr. Feit – though they reach diametrically opposite conclusions. Dr. Ryoo concluded plaintiff sustained, *inter alia*, an "articular surface partial thickness tear involving the anterior fibers

⁶ This amendment has been characterized as "the most significant change to the CPLR in the twenty-first century" (*See* Patrick M. Connors, *The Blockbuster Amendment to CPLR 2106 Permitting Any Person to Submit an Affirmation in Lieu of an Affidavit*, 98 St John's L Rev 375, 381 [2024]). Here, Dr. Leist's affirmation substantially conforms to the language requirement of the statute, as he recites: "I, Scott Leist, DC duly licensed and practicing in the State of New York, pursuant to the applicable[provisions of the Civil Practice Law and Rules, Section 2106; hereby affirm under the penalties of perjury that the statements contained herein are true and accurate" (*See* NYSCEF Doc. No. 29 at p. 5).

of the distal supraspinatus tendon [i.e., a rotator cuff tear] [and] diffuse tendinitis involving the remainder of the supraspinatus and infraspinatus tendons” of the left shoulder (NYSCEF Doc. No. 30 at p.1, par. 3).⁷ From the same scans as reviewed by Dr. Ryoo, Dr. Feit had concluded there was “no MRI evidence of rotator cuff tear” (*see supra*).

Dr. DeMarco concluded plaintiff suffers from, *inter alia*, “disc space narrowing, spondylosis and disc herniation impinging upon the thecal sac at C3-C4[,] disc herniation impinging upon the thecal sac at C4-5[,] spondylosis and disc herniations compressing the thecal sac and impinging upon the lateral neural foramina at C5-C6 and C6-7” (*Id.*, at p.3, par. 3). Dr. Feit had concluded plaintiff did not sustain any impingements at C3-C4, C5-C6 or C6-C7 (*see supra*). Dr. DeMarco also concluded plaintiff suffered a disc herniation with impingement at L5-S1 (*Id.*, at p. 4, par. 5).

As stated in the narrative report, Dr. Leist concluded: “It can be stated with a reasonable degree of medical certainty that the injuries sustained by Mr. Ramish Sookdeo were directly caused by the accident on 3/4/24” (NYSCEF Doc. No. 29 at p. 5). The treatment report of Dr. Leist dated May 8, 2024 further confirms plaintiff suffered a loss of up to 40% of his cervical spine flexion, for example, and a 38% loss of his lumbar spine flexion, for example, along with other appreciable reductions to extension, right/left lateral flexion and right/left rotation to plaintiff’s cervical and lumbar spine (NYSCEF Doc. No. 31 at p.1). Evidence of range of motion limitations is sufficient to defeat summary judgment (*Gobin v Singh*, 176 AD3d 1034, 1035 [2d Dept 2019]; *Sinfelt v Helm’s Bros.*,

⁷ The reports of Dr. Ryoo and Dr. DeMarco are combined into a single document. For ease of reference, the Court views the report as a four (4) page document (excluding the exhibit cover page) and cites to each respective page as necessary.

Inc., 62 AD3d 983, 983-984 [2d Dept 2009]). Finally, based upon the EMG/NCV testing, Dr. Mallhi concluded that as a result of the accident, plaintiff sustained bilateral carpal tunnel syndrome (wrists), bilateral median motor decreased velocity (wrist, elbow), left ulnar motor decreased velocity and bilateral ulnar tunnel syndrome (NYSCEF Doc. No. 32 at p. 2).

Plaintiff's proof, when taken together, raise triable issues of fact for a jury to determine as to whether plaintiff at least sustained serious injury to the cervical and lumbar regions of his spine and to his left shoulder, under the significant limitation of use category of Insurance Law § 5102[d] (*Strong v Sigman*, 224 AD3d 932, 933 [2d Dept 2024]; *Chavez v Foley*, 220 AD3d 651, 652 [2d Dept 2023]). Plaintiff's deposition testimony also raises questions of fact under the serious injury 90/180-day category (*Santos v Kiktus*, 232 AD3d 698, 698-699 [2d Dept 2024]; *Fils-Aime v Colombo*, 152 AD3d 493, 494 [2d Dept 2017]). While defendant asserted plaintiff "did not miss any time from work", plaintiff testified he in fact was retired (NYSCEF Doc. No. 18 at p. 9), rendering this assertion meaningless. While plaintiff testified at one point that he was not "only confined" to his home after the accident (*Id.*, at p. 30), he also testified he started therapy one week after the accident (*Id.*, at ps. 25, 26) and that since the accident date of March 4, 2024 and up to the date of his deposition on February 10, 2025, he was still attending therapy three times per week (*Id.*, at p. 27), thereby raising the question of whether for the subject period following the accident, he met the statutory requirement.

Further, each party submits conflicting medical expert opinions as to the nature, extent and causation of plaintiff's alleged injuries. These conflicting expert opinions raise credibility issues that must be resolved by the fact finder (*Borodkin v Friedwald Center for Rehabilitation & Nursing, LLC*, 225 AD3d 657, 658 [2d Dept 2024] [citations omitted]).

Conclusion

Accordingly, it is hereby

ORDERED, that defendant Ismail Girgin's motion (Seq. 01) for an order, pursuant to Insurance Law §§ 5104[a] and 5102[d], granting summary judgment dismissing the complaint on the grounds that plaintiff Ramish Sookdeo did not sustain a serious injury as a result of the subject accident, is denied in every respect.

All other arguments of the parties have been considered by the Court and are denied.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

HON. WAVNY TOUSSAINT
J. S. C.

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