

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D80968
C/

_____AD3d_____

Submitted - November 26, 2025

MARK C. DILLON, J.P.
WILLIAM G. FORD
LAURENCE L. LOVE
JAMES P. MCCORMACK, JJ.

2023-08198

DECISION & ORDER

Celeste Williams, appellant, v
Scott Ruta, et al., respondents.

(Index No. 53208/19)

Finkelstein & Partners, LLP, Newburgh, NY (Kara L. Campbell of counsel), for appellant.

Maynard, O'Connor, Smith & Catalinotto, LLP, Albany, NY (Rosy K. Cheema of counsel), for respondent Dutchess Beer Distributors, Inc.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Dutchess County (Edward T. McLoughlin, J.), dated August 22, 2023. The order, insofar as appealed from, granted that branch of the cross-motion of the defendant Dutchess Beer Distributors, Inc., and the separate cross-motion of the defendant Scott Ruta which were for summary judgment dismissing the amended complaint insofar as asserted against each of them on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable by the defendants, that branch of the cross-motion of the defendant Dutchess Beer Distributors, Inc., and the separate cross-motion of the defendant Scott Ruta which were for summary judgment dismissing the amended complaint insofar as asserted against each of them on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident are denied, so much of the order as, in effect, denied, as academic, the plaintiff's motion for summary judgment on the issue of liability and dismissing the defendants' affirmative defenses alleging culpable conduct on the part of the plaintiff and that branch of the cross-motion of the defendant Dutchess Beer Distributors, Inc., which was for summary

judgment dismissing the amended complaint insofar as asserted against it on the ground that it was not liable for the happening of the accident is vacated, and the matter is remitted to the Supreme Court, Dutchess County, for a determination on the merits of the plaintiff's motion and that branch of that defendant's cross-motion.

The plaintiff commenced this action to recover damages for personal injuries that she allegedly sustained in a motor vehicle accident. After the plaintiff filed a note of issue on January 26, 2023, the Supreme Court set a deadline to serve motions for summary judgment by March 28, 2023. On March 2, 2023, the plaintiff moved for summary judgment on the issue of liability and dismissing the defendants' affirmative defenses alleging culpable conduct on the part of the plaintiff. On April 14, 2023, the defendant Dutchess Beer Distributors, Inc. (hereinafter Dutchess), opposed the plaintiff's motion and cross-moved for summary judgment dismissing the amended complaint insofar as asserted against it on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident or, in the alternative, on the ground that it was not liable for the happening of the accident. On April 25, 2023, the defendant Scott Ruta cross-moved for summary judgment dismissing the amended complaint insofar as asserted against him on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident. The plaintiff opposed both cross-motions, arguing, *inter alia*, that they were untimely and that the defendants had failed to demonstrate good cause. In an order dated August 22, 2023, the court deemed the defendants' cross-motions to be timely, granted Ruta's cross-motion, granted that branch of Dutchess's cross-motion which was for summary judgment dismissing the amended complaint insofar as asserted against it on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident, and, in effect, denied, as academic, that branch of Dutchess's cross-motion which was for summary judgment dismissing the amended complaint insofar as asserted against it on the ground that it was not liable for the happening of the accident and the plaintiff's motion. The plaintiff appeals.

Pursuant to CPLR 3212(a), courts have "considerable discretion to fix a deadline for filing summary judgment motions" (*Brill v City of New York*, 2 NY3d 648, 651). "Absent a satisfactory explanation for the untimeliness, constituting good cause for the delay, an untimely summary judgment motion must be denied without consideration of the merits" (*Wittenberg v Long Is. Power Auth.*, 225 AD3d 730, 732 [internal quotation marks omitted]). "However, [a]n untimely motion or cross motion for summary judgment may be considered by the court where a timely motion was made on nearly identical grounds" (*id.* [internal quotation marks omitted]).

Here, the defendants' cross-motions were made several weeks after the expiration of the deadline imposed by the Supreme Court, and the defendants offered no explanation for this delay. Further, Ruta's cross-motion and that branch of Dutchess's cross-motion which were for summary judgment dismissing the amended complaint insofar as asserted against each of them on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident were not made on nearly identical grounds to the plaintiff's timely motion, as the plaintiff did not seek summary judgment on this issue (*see id.*; *Alexander v Gordon*, 95 AD3d 1245, 1247). Therefore, the court should have denied Ruta's cross-motion and that branch of Dutchess's cross-motion as untimely (*see Gomez v Tilden Estates, LLC*, 241 AD3d 791, 793; *Acosta*

v Shanahan Group, LLC, 240 AD3d 557, 558; *Wittenberg v Long Is. Power Auth.*, 225 AD3d at 732).

However, that branch of Dutchess's cross-motion which was for summary judgment dismissing the amended complaint insofar as asserted against it on the ground that it was not liable for the happening of the accident was made on nearly identical grounds to the plaintiff's timely motion and thus should have been considered (*see Montes-Vidal v New York State Thruway Auth.*, 238 AD3d 1131, 1135; *Lewinski v City of New York*, 229 AD3d 456, 458; *Wittenberg v Long Is. Power Auth.*, 225 AD3d at 733).

Under the circumstances, we remit the matter to the Supreme Court, Dutchess County, for a determination on the merits of the plaintiff's motion for summary judgment on the issue of liability and dismissing the defendants' affirmative defenses alleging culpable conduct on the part of the plaintiff, and that branch of Dutchess's cross-motion which was for summary judgment dismissing the amended complaint insofar as asserted against it on the ground that it was not liable for the happening of the accident (*see Malta v Culha*, 240 AD3d 772, 773; *Jones-Parrish v Ranieri*, 231 AD3d 795, 796).

The parties' remaining contentions need not be considered in light of our determination.

DILLON, J.P., FORD, LOVE and MCCORMACK, JJ., concur.

ENTER:


Darrell M. Joseph
Clerk of the Court