

<b>Campbell v Robinson</b>
2005 NY Slip Op 30046(U)
December 14, 2005
Supreme Court, Kings County
Docket Number:
Judge: Laura Lee Jacobson
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

At IAS Part 21 of the Supreme Court of the  
of the State of New York, County of Kings  
located at 360 Adams Street, Brooklyn,  
New York on the 14th day of December 2005

**PRESENT:**

**HON. LAURA L. JACOBSON**  
**Justice**

---

PHILLIP CAMPBELL,

Plaintiff,

against

ROBERT ROBINSON, ANTONIO  
GREEN and EDWIN JACQUES,

Defendants.

---

**Decision/Order**

Index No.: 12127/2003

The following motions are consolidated for disposition.

The following papers numbered 1 to 6 read on these Motions:

<b>Papers</b>	<b>Numbered</b>
Notices of Motion and Affirmation Annexed	1-4
Affirmation in Opposition	5
Affirmation in Support	6

Defendant Robert Robinson moves for an order pursuant to 22 NYCRR 202.21(3) vacating the note of issue and certificate of readiness and striking this matter from the trial calendar on the grounds that all discovery has not been completed; extending defendant's time to move for summary judgment; and directing the plaintiff to comply with all outstanding discovery demands or in the alternative precluding plaintiff from offering any evidence at trial as to any subject on which discovery has not been provided. Defendant Robinson also moves for an order granting summary judgment and dismissing the complaint on the grounds that plaintiff has not sustained serious injury within the meaning of Insurance Law §5102(d). Defendants Antonio Green and Edwin Jacques submitted an affirmation in support of defendant Robinson's motion for summary judgment. Plaintiff has failed to respond to the threshold motion. Plaintiff commenced this action seeking damages for injuries allegedly sustained on August 24, 2002. Plaintiff was a passenger in a motor vehicle operated by defendant Robinson that collided with a vehicle owned by defendant Edwin Jacques and operated by defendant Antonio Green on Classon Avenue at or near its

intersection with Lefferts Place, Brooklyn, New York.

In his bill of particulars, plaintiff alleges that the injuries he sustained included the following: cervical derangement with herniated disc at C6-C7 deforming the thecal sac and spinal cord, bulging discs at C3-C4, C4-C5 and C5-C6 deforming the thecal sac and spinal cord, straightening of the normal cervical curvature, chronic inflammation of the nerve roots; lumbar spine derangement; sprain and strain of the right shoulder with rotator cuff impingement and hypoplastic biceps tendon; sprain and strain of the left shoulder with tendonitis of the distal supraspinatous tendon and cerebral concussion with post concussion syndrome. Plaintiff alleged in his bill upon information and belief that all of the injuries are of a permanent and lasting nature. Plaintiff alleged that he was confined to bed for approximately one (1) week and home for a period of approximately (3) three weeks.

In support of the motion, defendant submitted a medical report affirmed pursuant to CPLR 2106, by his expert neurologist Edward M. Weiland. Dr. Weiland examined the plaintiff on October 20, 2004. Dr. Weiland noted that plaintiff stated that as a result of the accident, he sustained trauma to his neck and lower back. Plaintiff's current complaints consist of periodic headaches associated with visual disturbances. Plaintiff also complained of pain in the region of the neck, shoulders, lower back and right knee with flexion and extension movements. Dr. Weiland reported that plaintiff indicated that he underwent a course of multi modality rehabilitation treatments to include physical therapy, chiropractic spine care, as well as acupuncture treatments for approximately five months after this accident. Dr. Weiland stated that a detailed neurological examination was performed. Dr. Weiland reported that plaintiff's cognitive functions were intact, without evidence of aphasia or apraxia. Dr. Weiland found that funduscopic examination failed to reveal any signs of raised intracranial pressure. He stated that there was no scalp or sinus percussion tenderness. Dr. Weiland noted that plaintiff had full range of motion of the neck, both shoulders, as well as, lower torso. However, he did not quantify his results. Dr. Weiland found that there was no vertebral body percussion tenderness or paraspinal muscle spasm. Dr. Weiland reported that straight leg raising was unlimited at 90 degrees. He found no joint crepitus or effusions in the region of the right shoulder, right wrist or right knee. Dr. Weiland's impression/diagnosis was subjective headache disorder, cervical strain/sprain-resolved, lumbosacral strain/sprain-resolved and a history of contusion, right wrist, right shoulder and right knee. Dr. Weiland concluded that he could not find any evidence of lateralizing neurological deficits at the present time. In Dr. Weiland's opinion, plaintiff should be able to perform activities of daily living and seek gainful employment from a neurologic perspective.

Defendant also submitted a medical report duly affirmed pursuant to CPLR 2106 and completed by orthopedic surgeon Robert J. Orlandi, M.D. Dr. Orlandi performed range of motion tests on plaintiff's cervical spine, shoulders, thoracic spine, lumbar spine and knees. Dr. Orlandi reported that range of motion tests on plaintiff's cervical spine revealed extension is 60 degrees while normal is 50 degrees; right and left rotation was 80 degrees while normal is 70 degrees; full forward was 60 degrees and lateral bending to the right and left was to a normal 40 degrees. Dr. Orlandi also found that cervical lordosis was a normal 40 degrees. Dr. Orlandi noted that range of motion tests on plaintiff's thoracic spine revealed that thoracic rotation was a full 50 degrees right

and left and thoracolumbar flexion to the left and right was to a normal 40 degrees. Dr. Orlandi stated that thoracic kyphosis was a normal 35 degrees. Dr. Orlandi reported that range of motion tests of plaintiff's low back revealed a normal 80 degrees of forward flexion and 30 degrees of extension. Dr. Orlandi noted that lateral bend to the left was possible to a normal 30 degrees as was lateral bend to the right. Dr. Orlandi found that examination of plaintiff's low back revealed a normal lordosis of 40 degrees. Dr. Orlandi found that the plaintiff's knees had a full range of motion from full extension to 140 degrees flexion. Dr. Orlandi noted that the plaintiff's positive straight leg raising test in the supine or lying down position only, but it represented a false positive physical finding as it was not compatible with plaintiff's ability to forward flex to 80 degrees. Dr. Orlandi contends that although plaintiff's bill of particulars describes bulging discs from C3 through C6 that deform the spinal cord, bulging cervical discs with and without spinal cord impingement are due to laxity in the annulus fibrosis and not to trauma. Dr. Orlandi stated that the bill of particulars described lumbar derangement, and right and left shoulder pain and strain but the plaintiff had no symptoms during the examination. Dr. Orlandi noted that although plaintiff's MRI scan revealed a disc herniation, over 95 per cent of disc herniations are in asymptomatic individuals, thus the disc herniation is not related to the accident. Dr. Orlandi reported that plaintiff's right shoulder scan was said to show pre-existing abnormalities, including impingement but the site of impingement was not described. He noted that plaintiff's left shoulder MRI scan performed on 9/24/02 was said to show just a grade 1 Signal in the distal supraspinatus. However, Dr. Orlandi contends that his examination of both shoulders was unremarkable. Dr. Orlandi's diagnosis was cervical strain resolved with normal examination of both shoulders; normal thoracic and lumbar examination and normal right and left knee examination. In Dr. Orlandi's opinion, plaintiff's orthopedic examination did not reveal the presence of permanent residuals or a musculoskeletal disability and the prognosis is excellent.

Defendant has made a prima facie showing of entitlement to summary judgment by establishing that plaintiff has not sustained a serious injury as defined by the Insurance Law (see *Krat v. D'Amico*, 18 AD3d 505 [2<sup>nd</sup> Dept. 2005]). Plaintiff has failed to offer any evidence to rebut defendant's proof. Consequently, defendants are entitled to summary judgment and as such, defendant's motion to vacate the note of issue is moot.

Accordingly, defendant's motion for summary judgment is granted and the complaint is dismissed and defendant's motion to vacate the note of issue is deemed moot.

This constitutes the decision and order of this court.

ENTER:

LAURA L. JACOBSON, JSC

HON. LAURA JACOBSON