

Roman v New York City Tr. Auth.

2007 NY Slip Op 30077(U)

March 6, 2007

Supreme Court, New York County

Docket Number: 0403296

Judge: Donna Marie Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

ROMAN, ASKER

INDEX NO. 403296/04

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 003

NEW YORK CITY TRANSIT AUTHORITY, ET AL.
Defendants.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for Summary Judgment.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1, 1A

Answering Affidavits- Exhibits _____

2

Replying Affidavits _____

3

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

FILED

MAR 13 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3-6-07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21**

ROMAN ASKER,

**INDEX NO.
403296/04**

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY, ET AL.,

DECISION/ORDER

Defendants.

DONNA M. MILLS, J:

BACKGROUND

The subject action arises out of an automobile accident alleged to have occurred on April 28, 2003, between the plaintiff and motor vehicles owned by defendant New York City Transit Authority (the Authority) and defendant Mikhail Kisselev. Plaintiff, as a result of the aforesaid contact with the Authority vehicle claims that he was injured.

Mr. Kisselev now moves for summary judgment dismissing plaintiff's action against him on the grounds that the plaintiff has failed to satisfy the requisite threshold requirements set forth in New York Insurance Law §5102(d). The Authority cross moves for similar relief.

APPLICABLE LAW & DISCUSSION

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). "But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trial calendar and thus deny to other litigants the right to have their claims promptly adjudicated" (Andre v Pomeroy, 35 NY2d 361 [1974]).

It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a

matter of law (CPLR §3212[b]), and must do so by tender of evidentiary proof in admissible form. Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial for the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). The purpose of the No-Fault Law is to curtail unnecessary litigation for minor injuries (see Licari v Elliott, 57 NY2d 230 [1988]). By allowing plaintiffs to proceed with minor cases simply because defendants concede liability on the facts of the incident would undermine the legislative purpose of Insurance law 5102(d) and would greatly increase an already overburdened court system. Therefore, regardless of defendants' position regarding liability, plaintiff must prove that he sustained a serious injury to prevail on the merits of the case.

"[A] Defendant can establish that [a] plaintiff's injuries are not serious within the meaning of Insurance Law § 5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim" (Grossman v Wright, 268 AD2d 79, 83-84 [2nd Dept. 2000]). If this initial burden is met, "the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submissions by demonstrating a triable issue of fact that a serious injury was sustained within the meaning of the Insurance Law" (id. At 83-84).

In the instant action defendants have made out a prima facie case of their entitlement to judgment as a matter of law. In opposition to the motions, plaintiff submitted an affidavit attesting to her present condition of pain in her neck and back and also relied on medical records of Liliya Yanovskaya, MD and her narrative reports. Additionally, plaintiff relies on a magnetic resonance imaging report. Collectively, the medical report detailed Dr. Yanovskaya's treatment, testing, medical opinion and prognosis concerning plaintiff's injuries. Moreover, testing of plaintiff's cervical and lumbar spine revealed

limitations of movement in both areas. These objective medical findings, in conjunction with Dr. Lizzio's opinion that the injuries were caused by the accident, and that the limitations were significant and permanent, were sufficient to make out a prima facie case that plaintiff suffered serious injury (see, Cassagnol v Williamsburg Plaza Taxi, 234 AD2d 208, 209 [1st Dept. 1996]). The contrary view of defendants' physician merely raises issues of credibility to be resolved at trial (see Cassagnol v Williamsburg Plaza Taxi, supra at 209-210).

Accordingly, it is

ORDERED that the Defendants' motion and cross-motion respectively for summary judgment is denied.

This constitutes the decision and order of the court

Dated: 3-6-07

ENTER:



J.S.C.

FILED
MAR 13 2007
NEW YORK
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