

Losito v ELRAC, Inc.

2007 NY Slip Op 30199(U)

February 21, 2007

Supreme Court, Queens County

Docket Number: 0023428

Judge: Patricia P. Satterfield

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IA PART 19
Justice

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RYAN M. LOSITO, et al.,	Index Number <u>23428</u> 2004
Plaintiffs,	Motion
- against -	Date <u>December 13,</u> 2006
ELRAC, INC., et al.,	Motion Cal. Number <u>14</u>
Defendants.	

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The following papers numbered 1 to 8 read on this motion by defendants Elrac, Inc. and Timothy M. Bellew for summary judgment in their favor dismissing plaintiffs' complaint on the ground that each of the plaintiffs, Ryan M. Losito (Losito), Daniel E. Crocker (Crocker) and Christopher Reynolds (Reynolds), have failed to meet the serious injury threshold requirement of Insurance Law § 5102(d); and on this cross motion by defendants Alexis B. Felcon and Thomas Felcon for the same relief.

	<u>Papers</u> <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross-Motion - Affidavits - Exhibits....	5-8

Upon the foregoing papers it is ordered that the motion and cross motion are granted.

In this action to recover damages for personal injuries allegedly arising out of a September 23, 2003 motor vehicle accident, plaintiff Losito complains, inter alia, of a tear of the medial meniscus of the left knee; plaintiff Crocker complains, inter alia, of bulging discs in his lumbosacral spine; and plaintiff Reynolds complains, inter alia, of a wrist fracture and bulging discs in his cervical spine.

On this motion for summary judgment, defendants have the

initial burden to establish a prima facie case that plaintiffs' injuries are not serious within the meaning of Insurance Law § 5102(d) (see Toure v Avis Rent A Car Sys., 98 NY2d 345 [2002]; Gaddy v Eyler, 79 NY2d 955 [1992]; Rainey v Smith, 300 AD2d 383 [2002]; Duldulao v City of New York, 284 AD2d 296 [2001]). In support of their motion and cross motion for summary judgment, defendants submit the affirmed medical reports of Monette G. Basson, M.D., a neurologist, who states that she examined plaintiffs Losito, Crocker and Reynolds on March 23, 2006, that she conducted objective tests, and concluded that plaintiffs have full range of motion and exhibit no neurologic disabilities resulting from the underlying accident. Defendants also submit the affirmed medical reports of Robert J. Orlandi, M.D., an orthopedic surgeon, who states that he examined plaintiffs Losito, Crocker and Reynolds on April 4, 2006, and that he conducted objective tests, and concluded that plaintiffs have full range of motion and exhibit no orthopedic disabilities resulting from the accident. With regard to plaintiff Reynolds' wrist fracture, Dr. Orlandi concludes that this was a pre-existing fracture that was unrelated to the underlying accident. These affirmed medical reports are sufficient to establish a prima facie case that plaintiffs did not sustain any serious injuries as a result of the underlying accident (Funderburk v Gordon, 273 AD2d 196 [2001]; Harewood v Aiken, 273 AD2d 199 [2001]).

The burden now shifts to plaintiffs to come forward with sufficient evidence to raise a triable issue of fact as to whether they sustained serious injuries (see Gaddy v Eyler, supra). In order to demonstrate that a triable issue of fact exists that a serious injury was sustained within the meaning of the Insurance Law, plaintiffs must present objective evidence of the extent or degree of the alleged physical limitations resulting from the injuries and their duration (Noble v Ackerman, 252 AD2d 392 [1999]). Herein, plaintiffs submit no opposition whatsoever to defendants' motion and cross motion for summary judgment. Consequently, the motion and cross-motion are granted, and the complaint hereby is dismissed.

Dated: February 21, 2007

J.S.C.