

**Brasen v Segobind**

2007 NY Slip Op 30205(U)

February 16, 2007

Supreme Court, Queens County

Docket Number: 0001399

Judge: Duane A. Hart

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, DUANE A. HART IAS PART 18  
Justice

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MARCY BRASEN,

Index NO. 1399/05

Plaintiff(s),

Motion Date:

November 15, 2006

-against-

Cal No. 4

BASMATTIE SEGOBIND and HEMCHAND  
SEGOBIND,

Defendants.

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The following papers numbered 1 to 9 read on this motion.

Notice of Motion-Affidavits-Exhibits ..... 1 - 4  
Answering Affidavits-Exhibits..... 5 - 8  
Memorandum of Law..... 9

On April 23, 2002, plaintiff and defendants were involved in an automobile accident in Nassau County. Thereafter, plaintiff commenced an action alleging that she suffered serious physical injuries caused by defendants' negligence.

Issue was joined, discovery proceeded, EBT's were held and Note of Issue filed.

Citing Insurance Law, Sections 5102 and 5104, defendants seek summary judgment dismissing the action. They assert that plaintiff has not met the standards for serious injuries defined by the sections. They allege that the injuries of which plaintiff complains are not serious injuries within the meaning of the section.

According to defendants, plaintiff's injuries are, among others: severe anterior and posterior compartment synovitis of the left elbow with hypertrophic reactive synovial disease, requiring surgery on November 14, 2002: rotor cuff tear of the supraspinatus tendon of the left shoulder with fluid in the subacromial and subdeltoid bursa and aggravation, exasperation and activation of rheumatoid arthritis. Finally, say defendants, doctors designated by them, have examined plaintiff and expressed their medical opinion that plaintiff does not suffer from any disability as a result of the accident.

Specifically, defendants argue that plaintiff has not shown that her injuries

prevented her from performing substantially all of her usual and customary daily activities for at least ninety (90) days of the first one-hundred eighty (180) days immediately after the injuries. They add that plaintiff has not sustained a permanent total loss of use of a body organ, member function or system; nor is there a claim that plaintiff has suffered a permanent consequential limitation of the use of a body function or system or significant limitation of the use of a body organ or member. They emphasize that none of the injuries claimed by plaintiff are serious.

Defendants argue that plaintiff's injuries are merely the result of her long (15-20 years) history of rheumatoid arthritis and not the result of the accident. They note that plaintiff did not request an ambulance after the accident and drove her vehicle home. She did not seek medical treatment until the day after the accident when she went to see her orthopedist, with whom she had been treating for some time. Plaintiff, say defendants, did not complain about any injury to her right shoulder after the accident. Finally, they point to the medical reports of their doctors who examined plaintiff. Those doctors concluded that, except for her rheumatoid arthritis, plaintiff is normal and shows no disability resulting from the accident.

Plaintiff concedes that she suffered from rheumatoid arthritis for some time, but, she insists that the accident aggravated her condition. She states that she first saw her doctor about her arthritis in February 2002, and that a few days, April 19, 2002, before the April 23, 2002 accident, she saw her doctor. He determined then that there was full range of motion in both shoulders but full elevation was more difficult in the right shoulder. He ordered an MRI to determine if there was derangement, gave her pain killers and directed her to see a physical therapist "who specialized in myofascial release." The MRI's were taken on April 25, 2002. Based on his reading of the MRI's and an examination of, her doctor, found that range of motion had been reduced and that the related problems that she developed were causally related to the accident.

Eventually, says plaintiff, after numerous visits to her doctor between June 12, 2002 and January 2003, he recommended that she see an orthopedic surgeon, who later recommended surgery. She eventually underwent surgery. Her doctor concluded to a reasonable degree of medical certainty that her increased pain and related medical problems were causally related to the accident.

Upon review, defendant's summary judgment motion is denied. Plaintiff has overcome their prima facie showing that she did not meet the standards outlined by the statute. See Toure v. Avis Rent a Car Systems, Inc., 98 NY2d 345; Krease v. NYC Transit Authority, 789 NYS2d 281; Howard v. King, 307 AD2d 278.

Further, a question of fact is raised by the conflicting medical opinions expressed by the doctors for each side. Rotuba Extruders v. Ceppos, 46 NY2d 228, mandates denial of a summary judgment motion where there is a question of fact. See also, Grillo v. Brooklyn Hospital, 280 AD2d 542.

Dated: February 16, 2007

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J.S.C.