

Pierre-Louis v Reyes

2008 NY Slip Op 31707(U)

June 10, 2008

Supreme Court, Nassau County

Docket Number: 3933-06/

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

ADELE PIERRE-LOUIS,
Plaintiff,

TRIAL / IAS PART 32
NASSAU COUNTY

- against -

Index No. 13933/06

DANIEL REYES,
Defendant.

Motion Sequence No. 001

The following papers having been read on this motion:

- Notice of Motion, Affidavits, & Exhibits 1
- Answering Affidavits _____
- Replying Affidavits _____
- Briefs: Plaintiff's / Petitioner's _____
- Defendant's / Respondent's _____

The defendant moves, without opposition, for an order pursuant to CPLR 3212 granting the defendant summary judgment, and dismissing the complaint on the ground the plaintiff's claimed injuries do not meet the serious injury requirements of Insurance Law § 5102 (d). This personal injury action arises from a three vehicle accident on June 16, 2006, at or near the intersection of Post Avenue and Jericho Turnpike, Westbury, New York. The plaintiff commenced this action by filing a summons and verified complaint dated August 21, 2006. The plaintiff claims to have sustained a serious injury, to with posterior disc herniations at L3-4, L405 and L5-S1 with ventral thecal sac impression and foraminal narrowing, a partial tear of the right rotator cuff and C2-3 through C6-7

posterior discs bulges with ventral thecal sac impression. The plaintiff also claims to have sustained a permanent and significant limitation of the cervical and lumbar spines, right shoulder, and was unable to perform the usual and customary duties for the first 90 out of the first 180 days following the accident. The plaintiff alleges, in the bill of particulars, being confined to bed and home, and out of work for a period of three weeks following the accident.

The defense attorney states, in a supporting affirmation dated May 7, 2008, the plaintiff cannot establish a serious injury as defined in Insurance Law § 5102 (d), therefore the lack of evidence about a serious injury warrants dismissal of all claims against the defendant. The defense attorney points to the plaintiff's December 7, 2007 deposition, and asserts this motion is based partially on deposition transcripts. The defense attorney notes the plaintiff, a Micro Industries machine operator at the time of the accident, initially denied ever injuring the neck, back nor shoulder before the accident occurred, and denied being involved in a May 14, 2003 accident where the plaintiff injured the neck and back, although medical records indicate the plaintiff's past medical history was significant for a motor vehicle where the plaintiff injured the neck and back. The defense attorney asserts the medical proof does not support a causal relationship between the medical findings and the accident, rather all of the medical findings relating to these injuries are either resolved or degenerative in nature.

The defense attorney points to the orthopedic examination of the plaintiff on

February 25, 2008, by Dr. Frank Hudak, and notes Dr. Hudak, in a report, concluded, after a range of motion test of the plaintiff's cervical spine using a protractor, the plaintiff had full forward flexion, extension, lateral rotation and bending, and cited degrees of motion within normal limits. Dr. Hudak also found there was no tenderness nor atrophy in the muscles of either shoulder, a negative impingement sign in both shoulder. Dr. Hudak measured the range of motion in the shoulders with a protractor, and found them to be within normal limits, and done without pain. Dr. Hudak found full range of motion in the plaintiff's lumbar spine, as measured with an inclinometer. Dr. Hudak determined there was full range of motion in both lower extremities, and concluded the plaintiff sustained cervical and lumbosacral sprain as a result of the accident. Dr. Hudak indicated the plaintiff did not give a history of injury to either shoulder, stated there are no treatment records indicating the plaintiff sustained any injury to either shoulder as a result of the accident. Dr. Hudak opined there were no objective findings that the plaintiff had any disability nor sustained any permanent injuries as a result of the June 16, 2006 accident.

The defense attorney points to the neurological examination of the plaintiff on March 25, 2008, by Dr. Frederick Mortati and notes Dr. Mortati, in a report, states reviewing the plaintiff's medical records, and at the examination, the plaintiff stated no longer having any pain in the neck or shoulders, but sometimes pain in the low back. The physical examination by Dr. Mortati revealed intact muscle strength in the upper and

lower extremities. In the standing position, the plaintiff's forward flexion was performed to a point where the fingertips reached the plaintiff's ankles. The seated straight leg raising was negative on both sides of the plaintiff. Dr. Mortati's impression was the plaintiff's examination was a normal neurological examination. Dr. Mortati stated the plaintiff did not sustain any neurological pathology as a result of the June 16, 2006 accident. Dr. Mortati found the plaintiff did not experience cervical nor lumbar radiculopathy. Dr. Mortati concluded there was no evidence for radiculopathy on this examination nor by history either at the time of the examination or in the past.

This Court has carefully examined all of the papers submitted on this motion.

Insurance Law § 5102 (d) provides:

“Serious injury” means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

The defendant has submitted medical affirmations by Dr. Hudak and Dr. Mortati that show no serious injury to this plaintiff from the June 16, 2006 accident. The law requires the plaintiff to come forth with evidence which creates a triable issue of fact (*see Licari v. Elliott*, 57 NY2d 230, 441 NE2d 1088 [1982]). This Court finds the defendant has established a *prima facie* showing the plaintiff did not sustain a serious injury within the

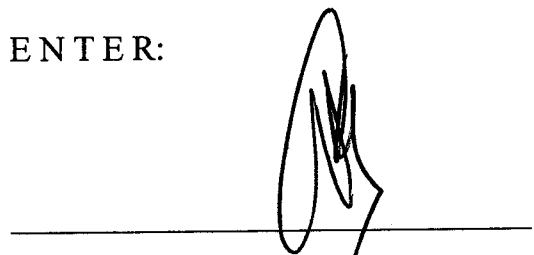
meaning of Insurance Law § 5102(d) as a result of the June 16, 2006 accident, and the plaintiff has not raised a triable issue of fact (*see Turchuk v. Town of Walkill*, 255 AD2d 576, 681 NYS2d 72 [2nd Dept, 1998]).

Accordingly, the motion is granted.

So ordered.

Dated: **June 10, 2008**

ENTER:



J. S. C.
HON. ANTONIO L. BRANDVEEM

FINAL DISPOSITION xxx NON FINAL DISPOSITION

ENTERED
JUN 13 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE