

Simpson v City of New York
2011 NY Slip Op 31781(U)
July 1, 2011
Supreme Court, New York County
Docket Number: 102902/08
Judge: Geoffrey D. Wright
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT
Justice

PART 62

Alma Simpson and Alma Laskaridis

INDEX NO. 102902/08

Plaintiff/Petitioner(s)

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

City of New York

Defendant/Respondent(s)

The following papers, numbered 1 to 4 were read on this motion/petition for Summary Judgment.

	Papers Numbered
Notice of Motion/Petition Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits _____	3
Replying Affidavits _____	4
Other (Cross-motion) & Exhibits Annexed _____	2

Cross-Motion: Yes X No

This motion for summary judgment is granted as per the annexed decision

Dated: June 27, 2011

GEOFFREY D. WRIGHT
G
AJSC J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

FILED

Check if appropriate: DO NOT POST

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTRY OF NEW YORK: Part 62

-----X

ALMA SIMPSON and ALMA LASKARIDIS

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER MOISE
VARGAS, NEW YORK CITY DEPARTMENT OF
TRANSPORTATION, ATLANTIC PARATRANS OF
NYC, IN., and MARIO G. ORTIZ

Defendants.

-----X

Index # 102902/08

Motion Cal. #

Motion Seq. #

DECISION/ORDER

Present:

Hon. Geoffrey Wright

Judge, Supreme Court

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion for Summary Judgment

PAPERS	NUMBERED
Notice of Motion, Affidavit & Exhibits Annexed-----	1
Order to Show Cause, Affidavit & Exhibits-----	
Answering Affidavit & Exhibits Annexed-----	3
Replying Affidavits & Exhibits Annexed-----	4
Other (Cross-motion) & Exhibits Annexed-----	2

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

On December 18, 2006, plaintiffs Alma Simpson and Alma Laskaridis were passengers in an Access-A-Ride vehicle that was involved in a collision with a stopped police car. Simpson and Laskaridis seek relief for injuries allegedly sustained from the accident.

Defendants Atlantic Paratrans and Mario Ortiz move for an order pursuant to Civil Practice Law and Rules § 3212 granting Summary Judgment on the grounds that the injuries sustained by the plaintiffs are not serious injuries as defined by Insurance Law 5104 (a) and that Ortiz operated his vehicle responsibly. Defendants City of New York, New York City Police Department, Police Officer Moise Vargas, and New York City Department of Transportation filed a cross-motion for Summary Judgment on the grounds that the plaintiff's injuries do not meet the serious injury threshold.

Insurance Law 5104 (a) requires one to have sustained serious injuries in order to recover non-economic loss. Insurance Law 5102 (d) defines serious injury:

“Serious injury” means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of 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 organ or member; 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.

In determining a motion for summary judgement where the issue is whether plaintiff sustained a serious injury defined by Insurance Law § 5102(d), the defendant bears the initial burden to present competent evidence that the plaintiff has no cause of action.” *Brown v. Achy*, 9 A.D.3d 30, 776 N.Y.S.2d 56, 2004 N.Y. Slip Op. 03703. The defendants met this burden by providing the affirmations of Dr. Lisa Nason, Dr. Daniel J. Feuer, and Dr. David A. Fisher. Dr. Nason affirms that neither defendant suffered a disability related to the accident and that both have normal ranges of motion in their cervical and lumbar spines. After a neurological examination, Dr. Feuer determined that neither plaintiff has damage causally related to the accident. Dr. Fisher performed an independent radiology review and affirmed that neither plaintiff has damage related to the accident.

The burden now falls on the plaintiff to raise issues of material fact as to whether she sustained “permanent consequential limitation of use of a body organ or member” or a significant limitation of use of a body function or system.” *Toure v. Avis Rent A Car Systems*, 98 N.Y.2d 345, 774 N.E.2d 1197, 746 N.Y.S.2d 865, 2002 N.Y. Slip Op. 05748. It must be shown that the sustained injuries are significant, permanent, and were caused by the accident. To be considered by the court, the proffered evidence must be in admissible form. Unsworn medical statements must be disregarded. *Grasso v. Angerami*, 79 N.Y.2d 813, 588 N.E.2d 76, 580 N.Y.S.2d 178. The reports of Dr. Madhu Boppana, Dr. Robert Diamond, Dr. David H. Delman, and Dr. Samuel Mayerfield are not affirmed and will not be considered by the court.

Plaintiff Alma Simpson claims to have suffered herniations and disc bulges in the cervical and lumbar spine. To establish the significance and the permanence of the injuries, Plaintiff Simpson presents the affirmation of Dr. Albert Villafuerte. After examining Ms. Simpson, he reported that the ranges of motion of her cervical and lumbar spine is limited and provided the degrees of Ms. Simpson’s range of motion as compared to the norm. With his latest examination occurring over four years after the incident, Dr. Villafuerte contends that the injuries are permanent in nature. This affirmation is sufficient to raise issues of fact regarding the significance and permanence of the injuries.

To establish causation, the plaintiff must provide medical evidence of the limitations contemporaneous to the incident. *Shu Chi Lam v. Wang Dong*, 922 N.Y.S.2d 381, 2011 N.Y.

Slip Op. 03915. To satisfy this requirement, Simpson presented the medical reports of Dr. Villafuerte and Dr. Raj Tolat. Both doctors found Simpson to be limited in her range of motion and determined her injuries to be causally related to the incident. These reports occurred only a few days after the accident and establish causation. *De La Cruz v. Hernandez*, —N.Y.S.2d —, 2011 WL 2039669 (N.Y.A.D. 1 Dept.), 2011 N.Y. Slip Op. 04377.

Plaintiff Simpson presented sufficient competent medical evidence to overcome the defendants' prima facie showing of lack of material facts.

Plaintiff Laskaridis claims to have suffered a closed head injury, concussion syndrome, headaches, cervical herniation, and lumbar disc bulge.

Ms. Laskaridis can make no claim that the injuries prevented her from performing substantially all of her daily activities for ninety of the one hundred and eighty days immediately following the accident because such a claim must be medically determined. Laskaridis was confined to her home for only four days and was given permission by Dr. Tolat to return to work on December 26, 2006.

The significance and the permanence of the injuries are established with the affirmation of Dr. Villafuerte. Having examined Laskaridis on January 10, 2011, he was able to determine that her range of motion continued to be limited in her cervical and lumbar spine and that the damage is permanent.

“Even where there is ample proof of a plaintiff's injury, certain factors may nonetheless override a plaintiff's objective medical proof of limitations and permit dismissal of a plaintiff's complaint.” *Morales v. Gillespie*, 29 Misc.3d 1216(A), 918 N.Y.S.2d 399 (Table), 2010 WL 4243441 (N.Y.Sup.), 2010 N.Y. Slip Op. 51849(U). One of these factors is an unexplained gap in treatment. Though Laskaridis presents the contemporaneous medical reports of Dr. Villafuerte and Dr. Rolat indicating that there immediate limitations on her range of motion, there is a gap in treatment breaks the chain of causation. In his July 6, 2007 report, Dr. Villafuerte

Laskaridis also provides contemporaneous medical reports in the affirmations of Dr. Villafuerte and Dr. Rolat. Both doctors examined her several days after the accident and determined that Laskaridis had limited range of motion in her cervical and lumbar spine and that the injuries were causally related to the incident. On July 6, 2007 Dr. Villafuerte examined Laskaridis and advised her to continue her physical therapy program and to follow up with him in six weeks. She did not return until January 10, 2011. Such a gap must be explained by the plaintiff and supported by corroborative proof. *Broussard v. Magic Limo*, 24 Misc.3d 1229(A), 899 N.Y.S.2d 57 (Table), 2009 WL 2357735 (N.Y.Sup.), 2009 N.Y. Slip Op. 51668(U). In his final report, Dr. Villafuerte writes that Laskaridis claims to have been doing physical therapy at two other unidentified facilities until 2009. There are no reports from these other facilities proving that she had been treated or any explanation as to why she stopped treatment in 2009. An unexplained gap in treatment necessitates the granting of summary judgment. *Delgado v. Bernard*, 23 Misc.3d 1131(A), 889 N.Y.S.2d 882 (Table), 2009 WL 1477991 (N.Y.Sup.), 2009 N.Y. Slip Op. 51041(U).

The accident occurred on a one way street with parking on the left side of the street and with a bicycle lane separating the driving lane and the parking lane. Officer Vargas stopped his vehicle on the left side of the street in the bicycle lane. Officer Gonis, in the passenger seat, opened his door into traffic and struck the side of the Access-A-Ride bus.

It now becomes necessary to consider Atlantic Paratrans and Mario Ortiz's claim that they are not liable because Ortiz operated his vehicle responsibly. The defendants cite Vehicle and Traffic Law § 1214 which prohibits one from opening "the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so." Officer Gonis failed to ensure that it was reasonably safe to exit the vehicle. Though he checked over his shoulder and in the side view mirror for oncoming traffic, he looked at the urinating man immediately before opening the car door. The time between checking for traffic and opening the car door establishes a violation of VTL § 1214. *Williams v. Persaud*, 19 A.D.3d 686, 798 N.Y.S.2d 495, 2005 N.Y. Slip Op. 05588.

The City of New York has failed to raise a question of fact as to whether the actions of the bus driver contributed to the accident. The City provides a picture that indicates that the accident may have occurred on the line separating the driving lane from the bicycle lane. A marking on a map indicating the approximate location of impact does not establish that it happened in that exact location. Furthermore, none of the four eyewitnesses indicate that Ortiz had been irresponsibly driving out of his lane at the time of the accident. Even if the court were to accept that the point of impact occurred on the line, there is no evidence indicating that it had contributed to the accident. VTL § 1214 does not provide exception for bicycle lanes. A person exiting a vehicle in a bicycle lane must make sure there is no traffic. *Villa v. Leandrou*, Slip Copy, 31 Misc.3d 1237(A), 2011 WL 2200310 (Table) (N.Y.Sup.), 2011 N.Y. Slip Op. 51021(U). Even if Officer Gonis were exiting into the line separating the bicycle lane from the driving lane, he would still be in violation of VTL § 1214.

Also, assuming the point of impact was exactly on the white line, this would indicate that the police officer stopped his vehicle almost entirely within the bicycle lane. Though VTL § 1104 permits emergency vehicles performing emergency operations to violate the normal rules of the road, issuing a warning to a man urinating illegally cannot be defined as an emergency operation pursuant to VTL § 114-b.

Summary judgment is granted to Atlantic Paratrans and Mario Ortiz and summary judgment is partially granted to the City because Alma Laskaridis' injuries have failed to meet the serious injury threshold.

This constitutes the decision and order of the Court.

FILED


GEOFFREY D. WRIGHT
AJSC

June 27, 2011

JUL 01 2011

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