

**Thomas v Yao**

2014 NY Slip Op 33259(U)

April 30, 2014

Supreme Court, Bronx County

Docket Number: 304612/2011

Judge: Norma Ruiz

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NEW YORK SUPREME COURT ----- COUNTY OF BRONX

PART 22

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No. 304612/2011

JUNAE THOMAS

Plaintiff,

Decision and Order

-against-

Present: HON. NORMA RUIZ

ELMEROSE YAO and JUNE J. ATKINSON,

Defendants.

The following papers numbered 1 to 6 Read on this motion SUMMARY JUDGMENT  
Noticed on 6/19/13 and duly submitted as No. 31 on the Motion Calendar of 10/21/13

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion to:

Papers	Numbered
Notice of Motions and Affidavits Annexed.....	1-2
Answering Affidavits .....	3-4
Replying Affidavits .....	5-6
Memorandum of Law .....	
Other:	

*Upon the foregoing papers, the foregoing motion(s) [and/or cross-motions(s), as indicated below, are consolidated for disposition] and decided as follows:*

Defendant Elmerose Yao ("Yao") moves for summary judgment on the grounds that Yao was not negligent in causing the subject accident and on the ground that the plaintiff did not sustain a serious injury. Upon a review of the moving papers and opposition submitted thereto, the motion is denied.

This action involves a motor vehicle accident on March 20, 2011. As a result of the accident, the plaintiff who was only 19 years old on the date of the accident, alleges she sustained the following injuries: bulging disc at levels C5-6, C6-7, L3-4, L4-5; herniated disc at levels C4-5, L4-5; cervical radiculitis; bi-lateral left radiculopathy; bursitis right hip and derangement of the right knee .

Each party has a conflicting account of how the accident happened. As such, that branch of the motion based on liability is denied.

With respect to the threshold portion of the motion, the Court finds that the defendant met her prima facie burden of establishing that plaintiff did not sustain a serious injury by submitting the affirmed report of her medical expert who, based upon his examination of the plaintiff, found full range of motion in the plaintiff's cervical and lumbar spine, and concluding that all sprains and strains resolved had resolved (*Cruz v Rivera*, 94n AD3d 576 [1st Dept 2012]). Defendants also submitted the affirmed report of their expert radiologist who opined, after review the plaintiff's MRI films, that there were mild disc bulges that were degenerative in nature.

In opposition, the plaintiff raised an issue of fact by submitting an affidavit from her treating chiropractor Dr. Henry Hall who noted plaintiff's young age and no previous medical or traumatic history related to the plaintiff's symptoms, found limited range of motion in the plaintiff's cervical and lumbar spine contemporaneous with the accident and causally related the plaintiff's injuries to the accident. Dr. Hall also reviewed EMG/NCV tests which were positive for radiculopathy. In addition, Dr. Hall noted continuing limitations in the plaintiff's cervical and lumbar spine upon a recent examination. (*see generally Perl v. Meher*, 18 NY3d 208[2011]; *Vaughan v. Leon*, 94 AD3d 646 [1st Dept 2012]). Moreover, Dr. Hall expressly rejected defendant's expert's conclusion that the injuries were degenerative in origin.

Dr. Hall further noted in his affidavit that the plaintiff stopped treating because she reached maximum improvement (*Bonilla v Abdullah*, 90 AD3d 466 [1st Dept 2011][Plaintiff adequately explained the gap in treatment by asserting no fault benefits were cut off]); *Jean-Louis v. Gueye*, 94 AD3d 504 [1st Dept 2012][Gap in treatment adequately explained by plaintiff's doctor's finding that her improvement plateaued]).

“Since plaintiff’s evidence raised a triable issue as to whether the accident caused a serious injury to his lumbar spine within the meaning of the statute, it is unnecessary to address whether his proof with respect to other alleged injuries [are] sufficient to withstand defendants’ motion for summary judgment” ( *Pakeman v. Karekezia*, 2012 WL 3792116 [N.Y.A.D. 1st Dept] citing *Linton v. Nawaz*, 14 N.Y.3d 821 [2010] ).

Accordingly, the defendant’s motion is denied.

This constitutes the decision and order of the Court.

Dated: 4/30/14  
Bronx, New York

  
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HON. NORMA RUIZ, J.S.C.