

Levine v Sanogo
2015 NY Slip Op 31731(U)
August 12, 2015
Supreme Court, Bronx County
Docket Number: 306769/12
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----x
Essence Levine

Plaintiff,

-against-

**Ibrahima Sanogo, Panjshir Leasing, Inc.,
Jeffrey S. Mengel and Helen H. Mengel**

Defendants

DECISION/ORDER

Index No.: 306769/12

Howard H. Sherman
-----x J.S.C.

Plaintiff seeks damages for injuries allegedly sustained on April 11, 2012, in a motor vehicle accident that occurred on the Cross- Bronx Expressway , Bronx, New York .

This action was commenced in August 2012. To date, no Note of Issue has been filed.

Verified Bill of Particulars

Plaintiff alleges that she sustained accident-related serious injuries to her right shoulder described as a full-thickness rotator cuff tendon tear requiring arthroscopic surgery, and disc bulges at C5-6 and L4-5, and cervical and lumbar radiculopathies.

[Verified Bill of Particulars ¶ 7].

Plaintiff alleged that she was confined to bed and/or home for a week post-accident [Id. ¶ 12].

All injuries are alleged to be permanent and to qualify as serious injuries , in

four of the nine statutory categories: permanent loss of use of a body organ, member, function, or system; a permanent consequential limitation of use of a body organ or member; a significant limitation of use of a body function or system, and a medically determined injury or impairment of a non-permanent nature which prevented plaintiff from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence complained of [Id. ¶ 10].

Motions

1) Defendants Ibrahima Sanogo and Panjhir Leasing Inc., move for an award of summary judgment asserting that plaintiff did not sustain a serious injury in the underlying motor vehicle accident, and submit in support the affirmed report of an independent medical evaluation conducted January 9, 2014, and contemporaneous medical reports, and a copy of plaintiff's 10/30/13 examination before trial testimony. The report of a bio-mechanical engineer is not tendered in admissible form.

2) Defendants Jeffrey and Helen Mengel move for the same relief and incorporate the facts, legal arguments, and exhibits of the co-defendants' motion.

The motions are consolidated for purposes of disposition.

Independent Medical Evaluation

Alan M. Crystal, M.D., conducted an orthopedic evaluation of plaintiff on January 9, 2014, for purposes of which he reviewed contemporaneous reports of MRI

studies of the right shoulder, and lumbar and cervical spine, and reports of an arthroscopic surgery conducted 08/08/12, and of a lumbar discectomy performed on 11/23/12.

Upon examination of plaintiff, and review of the contemporaneous records, Dr. Crystal concluded that the above procedures were performed respectively for a chronic impingement, and a degenerated bulging disc, preexisting chronic conditions unrelated to the subject motor vehicle accident. Dr. Crystal noted that the report of the EMG study revealed no findings compatible with a symptomatic cervical herniated disc causing nerve root impingement, and there were no clinical findings to support the existence of one. He also noted that the EMG study revealed no findings of a lumbar radiculopathy. Dr Crystal's examination revealed full range of motion of the cervical and lumbar spine in all planes as quantified and compared to normal readings, and negative results upon Straight Leg Raising testing, and the absence of spasm in either area. On palpation of the shoulders, Dr. Crystal found no diffuse tenderness of the AC joint, or of the rotator cuff on abduction, or of the clavicle, and while plaintiff was found to "put suboptimal effort into doing range of motion testing", she was observed to voluntarily demonstrate rapid and full movement of the shoulder as she put her coat on.

Deposition

As pertinent here, plaintiff testified that as a result of the collision's impact , she went forward and fell backward, and then to the right [LEVINE EBT: 35; 38]. She hit her head on the front seat and then hit the back of her head on the back of the chair , and then hit the side of the door with her neck and right shoulder [EBT: 38-39]. After the accident, she went to her sister's house to care for her children while their mother was in the hospital, and she remained there for a week and one-half [49-50]. Two weeks after the accident, she began a course of treatment at Gerard Medical for her right arm and shoulder, and her neck and lower back [51]. She continued physical therapy until her shoulder surgery, and after that, she extended the therapy and rehabilitation until the end of 2012, or early 2013 [58]. She also had surgery for her lower back, and resumed therapy a month later [72-73]. At the end of 2012 or the beginning of 2013, the doctors gave her clearance to look for employment [80]. In early 2013, she started working for the Department of Homeless Services [9-11].

Discussion and Conclusions

Upon review of the submissions here including the clinical findings upon objective testing at the recent examination , and the conclusion of the atraumatic etiology of the injuries for which surgical intervention was sought, it is the finding of this court that defendants have made their prima facie showing of the lack of accident-

related serious injury here. Upon this showing and the persuasive evidence of chronic preexisting degenerative disease of the right shoulder and the cervical and lumbar spine, it is incumbent upon plaintiff to come forward with probative medical proof to raise an issue of that that the injuries sustained in the motor vehicle accident of April 11, 2012 were serious.

No opposition is interposed.

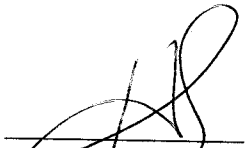
Accordingly, it is

ORDERED that the motion of defendants Ibrahima Sanogo and Panjhir Leasing Inc., and the motion of defendants Jeffrey Mengal and Helen Mengel be and hereby are granted on default and pursuant to CPLR 3212, and it is further

ORDERED that summary judgment be entered in favor of the defendants as against plaintiff dismissing the complaint and any and all cross-claims asserted against them.

This constitutes the decision and order of this court.

Dated: August 12, 2015


Howard H. Sherman