

Reynoso v Afriye
2015 NY Slip Op 31735(U)
August 12, 2015
Supreme Court, Bronx County
Docket Number: 307329/11
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----x
Jorge Reynoso

Plaintiff,

-against-

Baffour Afriye

Defendant

DECISION/ORDER

Index No.: 307329/11

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

Plaintiff seeks damages for injuries allegedly sustained on March 5, 2011 in a motor vehicle accident that occurred on Ogden Avenue, 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 he sustained accident-related serious injuries to his lumbar spine including posterior bulging discs at L3-4, and herniations at L4-5, and at L5-S1, and cervical and thoracic spine strain and sprain, and contusions to the right elbow, wrist, and hand, and bilateral knee sprain [Verified Bill of Particulars ¶ 8-9].

Plaintiff alleged that he was confined to bed and/or home for ninety out of one hundred and eighty days post-accident [Id. ¶ 10-11].

Motion

1) Defendant moves for an award of summary judgment on the grounds that plaintiff did not sustain a serious injury in the underlying motor vehicle accident , and

submits in support the affirmed report of an independent orthopedic evaluation conducted June 11, 2013, and a copy of plaintiff's 05/17/13 examination before trial testimony.

Independent Medical Evaluation

Using a goniometer and referencing A.M.A. guidelines, Dr. Benjamin Nachamie found full range of motion of plaintiff's cervical, thoracic, and lumbar spine in all planes as quantified and compared to normal readings, and on palpation of the musculature, he noted neither tenderness nor muscle spasm in any of these regions. There were negative findings on objective testing, including cervical compression and Straight Leg Raising, and on neurological examination, no sensory deficits were found in either the upper or the lower extremities.

The left shoulder¹ was found to have full range of motion in all planes, and there was no impingement sign.

Dr. Nachamie opined to a reasonable degree of medical certainty that there was no evidence of any orthopedic disability.

Deposition

As pertinent here, plaintiff testified that as a result of the rear-end collision's impact, his body went forward and then back [REYNOSO EBT: 14]. After the police recorded the accident information, he drove home, and two or three days later, he

¹ No left shoulder injury is asserted here.

visited a Bronx County healthcare facility with complaints of pain in his back, and trouble sleeping [Id. 21]. He commenced a course of physical therapy that continued until sometime in 2011 when he decided that the therapy was not making any change in his condition [24]. Plaintiff received no treatment for his right hand, wrist, or elbow, or for his knees [27-28]. He had no period of confinement after the accident [39].

Discussion and Conclusions

Upon review of the submissions here including the clinical findings upon objective testing at the recent examination, and the testimony of plaintiff concerning the lack of any post-accident confinement, it is the finding of this court that defendant has made his prima facie showing of the lack of accident-related serious injury here.

Upon this showing, it is incumbent upon plaintiff to come forward with probative medical proof to raise an issue of that the injuries sustained in the motor vehicle accident of March 5, 2011 were serious. Plaintiff has failed to do so.

In opposition, plaintiff comes forward with no medical records in admissible form, and provides no explanation for the failure to do so, nor does he make any showing that all the records may be considered as not merely referenced, but as "relied upon" by the defendant's expert. The report of the M.R.I. to the extent deemed admissible, is insufficient to rebut defendant's showing in light of the absence of any expert's finding of the traumatic etiology of the positive findings exhibited in the films.

Nor is there probative medical evidence establishing a correlation between these findings and clinically observed deficits in plaintiff's lumbar spine.

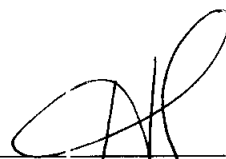
Accordingly, it is

ORDERED that the motion be and hereby is granted and it is further

ORDERED that summary judgment be entered in favor of defendant as against plaintiff dismissing the complaint .

This constitutes the decision and order of this court.

Dated: August 12, 2015


Howard H. Sherman