

Park v Seo
2016 NY Slip Op 30906(U)
April 18, 2016
Supreme Court, Queens County
Docket Number: 701039/14
Judge: Leslie J. Purificacion
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Part 39

RACHEL JEDIDIAH PARK,

Plaintiff

Index No: 701039/14

-against-

Seq # 1

DECISION/ORDER

PAUL M. SEO,

Defendant.

The following papers numbered 1 to 9 read on defendant's motion pursuant to CPLR §3212 dismissing the complaint of the plaintiff on the grounds that plaintiff's alleged injuries fail to meet the serious injury threshold requirement of Insurance Law §5102(d).

	<u>Papers Numbered</u>
N.M., Aff., Exhibits and Service.....	1-4
Answering Aff., Exhibits and Service.....	5-7
Reply and Service.....	8-9

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover for personal injuries allegedly sustained by plaintiff Rachel Jedidiah Park (hereinafter "plaintiff") in a motor vehicle accident that occurred on July 1, 2013 on Northern Boulevard and the Cross Island Expressway ramp in Queens County. In the verified bill of particulars, plaintiff alleges the following injuries: ruptured/herniated disc at C6-7; Carpel Tunnel Syndrome; post-traumatic cervical radiculopathy; post traumatic cervical herniated disc; post-traumatic lumbar herniated disc; post-traumatic lumbar herniate disc; post-traumatic concussion syndrome and concussion with post concussion syndrome. Plaintiff asserts that as a result of the accident she suffered: "a permanent loss of use of a body organ, member, function or

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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 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 90 days during the 180 days immediately following the occurrence of the injury or impairment” (Insurance Law §5102[d]).

Defendant asserts that plaintiff’s alleged injuries do not meet the threshold requirement of Insurance Law §5102(d), and therefore summary judgment dismissing plaintiff’s complaint is warranted.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact, (see CPLR §3212[b]; Alvarez v Prospect Hosp., 68 N.Y.2d 320; Winegrad v New York Univ. Med. Ctr., 64 N.Y.2d 851; Zuckerman v City of New York, 49 N.Y.2d 557). The question of whether plaintiff sustained a “serious injury” as defined by Insurance Law §5102(d) is one of law that can be disposed of by summary judgment and defendant in seeking same has the burden to show that plaintiff’s injuries do not rise to the level of those set forth in the statute (see Gaddy v Eyler, 79 N.Y.2d 955; Licari v Elliot, 57 N.Y.2d 230). This may be accomplished through submission of plaintiff’s deposition testimony and/or affidavits, affirmations or sworn reports of medical experts who examine the plaintiff and conclude that no objective medical findings support the plaintiff’s claim (see Grossman v Wright, 268 A.D.2d 79; Toure v Avis Rent A Car Sys., 98 N.Y.2d 345).

In support of her application, defendant submits the properly affirmed report of radiologist Sheldon Feit, M.D. D.A.R.B, the properly affirmed report of orthopedist Lisa Nason, M.D., plaintiff's verified bill of particulars and plaintiff's examination before trial testimony.

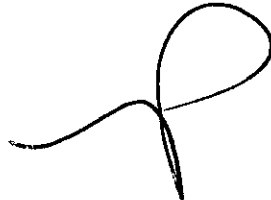
Defendant's submissions establish prima facie that the plaintiff did not sustain a "serious injury" as a result of the motor vehicle accident that is the subject of this action. In addition, defendant has, through plaintiff's examination before trial testimony and bill of particulars, sustained his burden to establish prima facie that plaintiff has not sustained a medically determined injury or impairment of a non permanent nature that prevented them from performing substantially all of the material acts constituting their customary daily activities during at least 90 out of the first 180 days following the accident. Thus, the burden shifts to the plaintiff to come forward with sufficient evidence that she sustained serious injuries (see, Gaddy v Eyer, 79 NY2D 955).

In opposition, plaintiff submits the properly affirmed radiology report of Ayooob Khodadadi, M.D., the properly affirmed report of treating doctor Alan Ng, M.D., and affidavit of plaintiff. The court finds that the reports of plaintiff's treating doctor and radiologist are sufficient to raise a triable issue of fact with respect to whether plaintiff has sustained a permanent loss of use of a body organ, member, function or system, a permanent consequential limitation of use of a body organ or member and a significant limitation of use of a body function or system. However, the court further finds that plaintiff has failed to raise a triable issue of fact with respect to whether she suffered "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 90 days during the 180 days immediately following the occurrence of the injury or impairment".

Accordingly, defendant's motion is granted to the extent that the portion of plaintiff's complaint asserting "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 90 days during the 180 days immediately following the occurrence of the injury or impairment" is dismissed.

This is the decision and order of the court.



Date: April 18, 2016

Hon. Leslie J. Purificacion, J.S.C.

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