

Scarborough v Hanchi
2016 NY Slip Op 31136(U)
June 18, 2016
Supreme Court, Queens County
Docket Number: 702356/2014
Judge: Cheree A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Acting Justice

IAS PART 30

FILED
JUN -3 2016
COUNTY CLERK
QUEENS COUNTY

TIFFANY SCARBROUGH,

Index No. 702356/2014

Plaintiff,

Motion

Date: March 18, 2016

-against-

DAVID HANCHI and MARVIN H. BARRETT,

Motion Cal. No. 93 and 94

Defendants.

Motion Sequence No. 1 and 4

The following papers and e-filed papers numbered 1-7, EF34-44, EF49-60, EF62-64 submitted and considered on the motions of defendants David Hanchi and Marvin H. Barrett for an Order pursuant to CPLR 3212 granting them summary judgment and dismissing the complaint of plaintiff Tiffany Scarbrough on the ground that she failed to sustain a serious injury under the Insurance Law.

	<u>Papers</u> <u>Numbered</u>
Notice of Motions-Affidavits-Exhibits.....	1-4; EF 34-44
Affirmations in Opposition-Affidavits-Exhibits....	EF 49-60
Reply Affidavits-Exhibits.....	5-7;EF 62-64

Plaintiff Tiffany Scarbrough filed a summons and complaint on April 8, 2014. She alleged that on February 4, 2014, the defendants' vehicles came into contact with her vehicle at the intersection of Springfield Boulevard and 115th Avenue, County of Queens, State of New York. Defendant David Hanchi (hereinafter "Hanchi") served a verified answer with cross claims on August 27, 2014, essentially denying Scarbrough's allegations related to liability and damages. Co-defendant Marvin H. Barrett (hereinafter "Barrett") served a verified answer with cross claims on May 12, 2014, essentially denying Scarbrough's allegations related to liability and damages.

Now, defendants Hanchi and Barrett are moving for summary judgment pursuant to CPLR 3212, alleging that Scarbrough failed to sustain a serious injury under New York Insurance Law. In support of the motion, in addition to the pleadings, Hanchi submitted the affirmation of Katie A. Walsh, Esq.; memorandum of law; Scarbrough's summons and verified complaint; a copy of the Note of Issue; Scarbrough's verified bill of particulars; Scarbrough's deposition transcript dated June 24, 2015, including correspondence dated July 14, 2015 related to her execution of the transcript; a copy of the report of Dr. Alan J. Zimmerman dated August 5, 2015.

In support of his motion, Barrett submitted the affirmation of Marcella Gerbasi Crewe, Esq.; So-ordered stipulation of Court-Attorney Referee Richard Lazarus dated November 10, 2015; the parties pleadings; Scarbrough's verified bill of particulars and supplemental verified bill of particulars; Scarbrough's deposition transcript dated June 24, 2015; reports of Dr. Alan J. Zimmerman dated August 5, 2015 and January 6, 2016.

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

Deposition testimony of Plaintiff Tiffany Scarbrough

Scarbrough alleged in her verified bill of particulars that the accident occurred on February 4, 2014 at the intersection of Springfield Boulevard and 115th Avenue, Queens, New York. She alleged that she sustained injuries to her cervical spine, lumbar spine, head. She claimed that she was partially incapacitated as a result of the accident. She alleged that as a result of the accident she sustained a serious injury as defined in Insurance Law section 5102 (d) under the permanent loss of use of a body organ, member, function or system; permanent consequential limitation or use of a body organ or member; significant limitation of use of a body function or system; and under the 90/180 day category of the Insurance Law.

She testified that on the date of the accident, she was stopped at a red light at the intersection of Springfield Boulevard and 115th Avenue, Queens when the cars being driven by the defendants collided, causing one of the vehicles to come into contact with her vehicle. The next day she went to Queens Community Medical Care for treatment for pain in her back and neck. She treated for physical therapy three times a week until May, 2015. She received acupuncture, orthopedic and physical therapy treatment at the facility. She also underwent two MRI's, one on her back on the other on her neck. She was not confined to her home, but was in pain. She was not employed at the time of the accident. She had complaints of pain related to walking flights of stairs, standing for a period of time, and heavy lifting. At the time of the accident she was in school and did not miss any days as a result of the accident. She was involved in a previous car accident in 2014 but was not injured. She had a subsequent accident but was not injured (Hanchi ex "D"; Barrett ex "G", pp 13, 17-22, 31-52, 56-66).

Dr. Zimmerman performed an independent orthopedic medical examination on Scarbrough on August 5, 2015. The doctor reviewed the verified bill of particulars and various medical records

prior to performing an examination. Range of motion was tested with a goniometer. According to Dr. Zimmerman, Scarbrough's range of motion was the following:

Cervical Spine- flexion 60 degrees (50 degrees normal); extension 60 degrees (60 degrees normal); right and left lateral flexion 45 degrees (45 degrees normal); right and left rotation 80 degrees (80 degrees normal).

Lumbosacral Spine- flexion 60 degrees (60 degrees normal); extension 25 degrees (normal 25 degrees); right and left lateral flexion of 25 degrees (25 degrees normal). Supine and reverse straight leg raise was 70 degrees (normal 70-90 degrees).

In Dr. Zimmerman's opinion, further treatment was not necessary. In his opinion, the MRI of her lumbar spine showed degeneration, which was pre-existing and not caused by the accident.

The copy of the supplemental verified bill of particulars and the second report of Dr. Zimmerman dated January 6, 2016 are not attached to Hanchi's papers, but are attached to Barrett's. In her supplemental verified bill of particulars Scarbrough alleged additional injuries to left shoulder; anxiety and post-concussion syndrome.

Dr. Zimmerman performed a second examination of Scarbrough on January 6, 2016. The range of motion in her cervical spine and lumbar spine were unchanged from his prior report. Range of motion testing was performed with a goniometer. His additional findings were as follows:

Thoracic Spine- flexion, right and left lateral bending- 45 degrees (45 degrees normal); extension 0 degrees (0 degrees normal); right rotation 30 degrees (30 degrees normal).

Shoulder- left and right flexion 180 degrees (180 degrees normal); right and left extension 40 degrees (40 degrees normal); right and left abduction 180 degrees (180 degrees normal); right and left adduction 30 degrees (30 degrees normal); right and left internal rotation 80 degrees (80 degrees normal); right and left external rotation 90 degrees (90 degrees normal).

Dr. Zimmerman stated that Scarbrough had denied any injury to her left shoulder or thoracic spine, and in his conclusion, she did not have any injuries to these areas.

Hanchi and Barrett have established their prima facie case. Now, Scarbrough must come forward with admissible evidence to raise a triable issue of fact (*Id.*).

In opposition Scarbrough submitted the affirmation of Spencer Bell, Esq.; her supplemental verified bill of particulars dated September 4, 2015; her affidavit dated March 1, 2016; the affirmation of Dr. Arvind Shah dated February 1, 2015 and the affidavit of Dr. Bilgin Kerisli dated January 29, 2016.

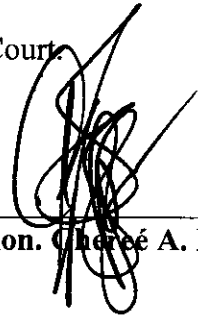
In her affidavit, Scarbrough described the accident, her injuries and her difficulty in completing her daily tasks.

The Court finds that Scarbrough has raised triable issues of fact that she has sustained a serious injury, except under the 90/180 day category (*see Licari v Elliott*, 57 NY2d 230 [1982]). She has presented contemporaneous and recent evidence of range of motion deficits in her alleged sites of injury. In Dr. Shah's and Dr. Kerisli's opinions, the results of MRI testing is not degenerative, but related to the accident.

Therefore, the motion for summary judgment of defendants Hanchi and Barrett is granted to the extent that plaintiff Tiffany Scarborough claims of serious injury under the 90/180 day category are dismissed.

This constitutes the decision and order of the Court.

Dated: May 18, 2016



Hon. Chereé A. Buggs, AJSC

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