

<b>Oates v Maspeth Supply Co., LLC</b>
2017 NY Slip Op 31607(U)
May 24, 2017
Supreme Court, Queens County
Docket Number: 3656/2014
Judge: Pam B. Jackman-Brown
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NEW YORK SUPREME COURT - COUNTY OF QUEENS

IAS PART 19

Present: Hon. Pam Jackman Brown, JSC

RAMEL O. OATES

Plaintiff,

-against-

MASPETH SUPPLY CO., LLC, ENTERPRISE HOLDINGS, INC., EAN HOLDINGS, LLC, NATIONAL CAR RENTAL AND GREGORIO A. BRANDFORD,

Defendants

Index No. 3656/2014  
Motion Date: 3/31/17

Cal. No. 92

Mot. Seq. No.: 10

FILED  
JUN 06 2017  
COUNTY CLERK  
QUEENS COUNTY

Recitation, as required by CPLR § 2219(a), of the following papers numbered 1 to 7 read on this motion by Defendants, Enterprise Holdings, Inc, Ean Holdings. LLC, National Car Rental and Gregorio A. Brandford for an Order: (1) pursuant to CPLR § 3212 granting summary judgment in favor of the Defendants ENTERPRISE HOLDINGS, INC., EAN HOLDINGS, LLC, NATIONAL CAR RENTAL and GREGORIO A. BRANDFORD and dismissing the complaint of the plaintiff for personal injuries on the grounds that the Defendants ENTERPRISE HOLDINGS, INC, EAN HOLDINGS, LLC, NATIONAL CAR RENTAL and GREGORIO A. BRANDFORD were not liable for the accident; (2) pursuant to CPLR § 3212 granting summary judgment in favor of Defendants ENTERPRISE HOLDINGS, INC., EAN HOLDINGS, LLC, NATIONAL CAR RENTAL and GREGORIO A. BRANDFORD and against Plaintiff RAMEL O. OATES as the injuries alleged by plaintiff RAMEL O. OATES do not satisfy the "serious injury" threshold requirement of Section 5102(d) of the Comprehensive Motor Vehicle Insurance Reparations Act of the State of New York; and (3) for such other and further relief as this Court deems just and proper; and Notice of Cross Motion by Defendant Maspeth Supply Co., LLC, seeking an Order pursuant to CPLR 3124 compelling defendant Gregorio A. Brandford to appear for deposition on behalf of Maspeth and for such other and further relief as the Court may deem just and proper.

	PAPERS E FILE NUMBERED	
	Papers	Exhibits
Notice of Motion - Exhibits and Affidavits Annexed	1-2	A-J

Notice of Cross Motion- Affidavits and Exhibits Annexed	3-4	A-E
Affirmation in Opposition- Affidavits and Exhibits Annexed	5	A-E
Reply Affirmation	6	
Reply Affirmation- Affidavits and Exhibit	7	A-B

Upon the papers listed above, this Notice of Motion is hereby decided in accordance with this Decision/Order.

This is action for personal injuries allegedly sustained by Plaintiff as a result of a motor vehicle accident on October 8, 2013 at the intersection of 156<sup>th</sup> Street and 111<sup>th</sup> Avenue in Jamaica, New York in the County of Queens. Pursuant to a Stipulation of Partial Discontinuance, Plaintiff discontinued this action as it pertains to Enterprise Holdings, Inc., Ean Holdings, LLC and National Car Rental.

Now, upon motion, Defendants Enterprise Holdings, Inc., Ean Holdings, LLC, National Car Rental and Gregorio A. Brandford, seek summary judgment in favor of the Defendants and dismissing the complaint on the grounds that said Defendants were not liable for the accident and that the injuries alleged by Plaintiff do not satisfy the "serious injury" threshold of Insurance Law § 5102(d). Plaintiff opposes the application. Defendant, Maspeth Supply Co., LLC, cross-moves for an Order pursuant to CPLR § 3124, compelling Defendant, Gregorio A. Brandford, to appear for deposition

Upon the foregoing papers, it is ordered that the motion by Defendants for an Order pursuant to CPLR § 3212, granting summary judgment in favor of Defendants and dismissing the complaint on the grounds that Defendants were not liable for the accident, is denied.

In support of the application, Defendants presented the deposition testimony of Plaintiff and Defendant Brandford. Defendant also submitted a copy of the police report from the accident. Defendant argues that the evidence established that Plaintiff failed to yield the right of way and caused the accident by proceeding through a stop sign controlled intersection.

New York Vehicle and Traffic Law (hereinafter "VTL") § 1142(a) provides that a driver of a vehicle approaching a stop sign shall sign as required by Vehicle and Traffic Law § 1172. After having stopped, the driver shall yield the right of way to any vehicle which has entered the intersection from another highway or is approaching so closely as to constitute an immediate hazard. VTL § 1172(a) provides that a driver of a vehicle approaching a stop sign shall stop at the marked stop line, but if none, shall stop before

entering the corps walk, or if no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection. "There can be more than one proximate cause of an accident" (*Cox v Nunez*, 23 AD3d 427, 427 [2d Dept 2005]). "A driver who has the right-of-way may still be found partially at fault for an accident if he or she fails to use reasonable care to avoid a collision with another vehicle in an intersection" (*Jones v Vialva-Duke*, 106 AD3d 1052, 1052 [2d Dept 2013]). Here, there is a triable issue of fact as to what actions, if any, Defendant Brandford took in order to avoid the collision. Defendant Brandford failed to establish that he is free from comparative fault. Thus, Defendant failed to establish prima facie entitlement to summary judgment. Accordingly, Defendant's application for summary judgment is denied.

The Court now turns to the branch of Defendants' motion seeking summary judgment in the grounds that Plaintiff's injuries do not satisfy the "serious injury" threshold established in Insurance Law § 5102(d). Plaintiff opposes the application.

As set forth in the Verified Bill of Particulars, Plaintiff alleges that he suffers from central disc herniations at the L2-3 and L3-4 disc spaces, diffuse disc bulge at the L4-5 disc space, left S1 radiculopathy, lumbar myofascial derangement, left knee contusion, depression, lumbar spine strain and sprain, left knee strain and sprain and acute myofascial strain. Plaintiff also alleges that he sustained trauma to the head, which caused alteration of consciousness resulting in cerebral concussion, severe debilitating headaches, bilateral blurriness and general decrease in clarity of vision. Plaintiff claims to have suffered injuries to his lumbar spine, which caused severe lumbo-sacral sprain, which resulted in root damage. The claimed injuries have caused a marked limitation of function and are alleged to be permanent in nature.

Defendants' argue that Plaintiff has not shown that he suffered a permanent loss of use of a body organ, member, function, or system; permanent or consequential limitation of the use of a body function or system; or significant limitation of the use of a body organ or member or that he could not perform substantially all of his usual and customary daily activities for at least ninety days of the first one-hundred eighty days following the accident.

In support of their motion, Defendants submitted the affirmed report of Mathew M. Chacko, M.D., Edward Toriello, M.D., and Sheldon P. Feit, M.D. The affirmations of Mathew Chacko, M.D. and Edward Toriello, M.D. indicate that Plaintiff's lumbar strain was resolved. The Affirmation of Sheldon Feit, M.D. revealed "no abnormalities causally related to the injury of 10/08/2013."

Plaintiff opposes the motion and argues Plaintiff's injuries meet the standards set by Insurance Law § 5102(d) and § 5104(a). In support, Plaintiff submitted the affirmation of Anuradha Anand, M.D., who indicates that as a result of the accident, Plaintiff sustained the following injuries: lumbar myofascial derangement, lumbar disc bulges and herniations at the L2, L-3, L4 and L4-L5 levels, left S1 lumbar radiculopathy, left knee contusion and depressed mood. Dr. Anand opines that Plaintiff's injuries are traumatically induced, permanent in nature, and causally related to the accident of October 8, 2013. Additionally, Plaintiff's supporting affidavit indicates that his daily activities have been affected by his injuries and continue to date.

Upon review, Defendants' motion is denied. There are questions of fact surrounding whether Plaintiff's injuries constitute a permanent consequential limitation or significant limitation of use of a body organ, member, function or system, and as such, Plaintiff has overcome the prima facie showing that he did not meet the standards outlined by the statute. See, *Luberda v Spameni*, 303 A.D.2d 384 (2d Dep't. 2003), *Wierzbicki v Mathew*, 296 A.D.2d 400 (2d Dep't. 2002).

Defendant Maspeth Supply Co., LLC's application for an Order pursuant to CPLR § 3124 compelling Defendant Gregario A. Brandford to appear for deposition on behalf of Maspeth is granted.

The above constitutes the decision and order of the Court.

**IT IS HEREBY ORDERED** that Defendant Gregario A. Brandford shall appear for an Examination before Trial on a date, time and location set by Defendant Maspeth Supply Co., LLC.

So Ordered,

Dated: May 24, 2017  
Jamaica, NY

  
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HON. PAM JACKMAN BROWN, JSC

