

**Reifer v Strobel**

2018 NY Slip Op 30115(U)

January 22, 2018

Supreme Court, Kings County

Docket Number: 510242/15

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22<sup>nd</sup> day of January, 2018

**P R E S E N T :**

HON. DEBRA SILBER,  
Justice.  
\_\_\_\_\_ x

SHLOIME REIFER,  
Plaintiff,  
  
-against-  
  
DUVED STROBEL AND MOISHE STROBEL  
a/k/a ZEEV STROBEL,  
  
Defendants.  
\_\_\_\_\_ x

**DECISION / ORDER**

Index No. 510242/15  
Mot. Seq. # 2  
Submitted: 1/11/18

Papers numbered 1 to 14 were read on this motion:

Papers Numbered:

Notice of Motion/Order to Show Cause/Exhibits \_\_\_\_\_

1-7 \_\_\_\_\_

Affirmation in Opposition/Exhibits \_\_\_\_\_

8-13 \_\_\_\_\_

Reply Affirmation/Exhibits \_\_\_\_\_

14 \_\_\_\_\_

Defendants move for summary judgment and dismissal of plaintiff's action, pursuant to CPLR § 3212, on the ground that plaintiff has failed to sustain a "serious injury," pursuant to Insurance Law § 5102(d). Movants have made a *prima facie* case with objective medical evidence with regard to the following categories of injury:

- a permanent consequential limitation of use of a body organ or member.
- a significant limitation of use of a body function or system.
- a medically determined injury or impairment which prevented the party from performing substantially all of the material acts which constituted his or her customary daily activities for not less than 90 days during the 180 days immediately following the accident.

As regards the category of “a medically determined injury or impairment which prevented the party from performing substantially all of the material acts which constituted his or her customary daily activities for not less than 90 days during the 180 days immediately following the accident,” it is noted that plaintiff states in his EBT that he missed two months of work after the accident and then returned to work. He also states that he continued to work at that job until February of 2017, almost four years after the accident. Pages 10-11.

With regard to the other two applicable categories of injury, defendants provide an affirmation from Dr. Joseph C. Elfenbein, an orthopedic surgeon, dated May 17, 2017. Therein, he states that plaintiff’s cervical and lumbar spine sprains have resolved, as have plaintiff’s bilateral shoulder sprains. He tested plaintiff’s range of motion in these four parts of his body with a goniometer, and reports a completely normal exam with full range of motion.

Plaintiff opposes the motion. in opposition, he provides an affirmation from Dr. Leonard Bleicher, dated October 12, 2017. Therein, Dr. Bleicher states that he first examined plaintiff on May 30, 2014, the day after the accident. Plaintiff reported that he was driving his minivan through a green light at an intersection, when defendant went through a red light and hit him on the driver’s side of his minivan. He said his van was hit so hard his vehicle spun a quarter turn. He was taken to the emergency room by an

ambulance and his minivan was towed. Dr. Bleicher states that at the first exam, plaintiff complained of pain to his left wrist, both shoulders, both knees, and to his neck and lower back. At the time of the accident, plaintiff was twenty-six years old.

Dr. Bleicher states that he tested plaintiff's range of motion at that initial exam, and it was substantially restricted. He placed plaintiff on a course of physical therapy. He states that plaintiff continued with the physical therapy until October of 2014, when "his no-fault benefits were terminated." He referred plaintiff for MRIs, EMG/NCS testing and to see an orthopedist. He states that "as a result of the motor vehicle accident on May 29, 2014, Mr. Reifer sustained left shoulder contusion, right shoulder rotator cuff/supraspinatus tear, adhesive capsulitis - 'frozen' right shoulder impingement syndrome; left wrist contusion/sprain; median nerve injury, right wrist; left S1 radiculopathy; disc bulges at L1/2, L2/3, L3/4, L4/5 and L5/S1; herniation at C3/4; bulges at C5/6 and C6/7; cervical spine and lumbar spine sprains; and discogenic neck and lower back pain. These injuries have caused a significant and permanent restriction in the normal range of motion of Mr. Reifer's cervical spine, lumbar spine, right shoulder and left shoulder."

Plaintiff returned to see Dr. Bleicher on August 22, 2017, for a follow-up exam to respond to this motion. He again tested plaintiff's range of motion, using a goniometer, and reports significant restrictions in the range of motion of plaintiff's cervical and lumbar spine, and in both shoulders. He states that plaintiff still is experiencing pain in all of these body parts. He concludes that "it is axiomatic that if the injury is not resolved after more than three years it is permanent in nature. It can only follow then that his quality of life has been significantly impaired." Putting aside Dr. Bleicher's referring to plaintiff by another name, he states "if is my professional opinion, with a

reasonable degree of medical certainty, that [plaintiff] has suffered a permanent and significant loss of function and use in his cervical spine, lumbar spine, right shoulder and left shoulder. . . . the initial injuries have progressed to permanency. The anatomic objective changes observed initially and still present today would cause the patient to experience the pain syndrome described above. . . . with a reasonable degree of medical certainty, there is a direct causal relationship between the patient's current condition, interval pathology and the accident of May 29, 2014. Any degenerative changes found on the MRI films are normal for plaintiff's age and are not the cause of plaintiff's complaints of neck, lower back and bilateral shoulder pain."

The court concludes that plaintiff has overcome the motion and presented objective medical findings which demonstrate that he sustained a "serious injury" pursuant to Insurance Law § 5102(d) with regard to the following categories of injury:

- a permanent consequential limitation of use of a body organ or member.
- a significant limitation of use of a body function or system.

However, plaintiff has not presented any objective medical evidence which overcomes the motion with regard to the category "a medically determined injury or impairment which prevented the party from performing substantially all of the material acts which constituted his or her customary daily activities for not less than 90 days during the 180 days immediately following the accident" and defendants' motion is granted as to that category of injury.

This constitutes the decision and order of the court.

ENTER:

  
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Hon. Debra Silber, J.S.C.  
Hon. Debra Silber  
Justice Supreme Court