

Sung Eun Lee v Uddin
2018 NY Slip Op 31159(U)
June 7, 2018
Supreme Court, New York County
Docket Number: 153584/2016
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY
PRESENT: Hon. Adam Silvera **Part 22**

SUNG EUN LEE and DIANA CARRINGTON,

DECISION/ORDER

Plaintiffs,

-against-

INDEX NO. 153584/2016
MOTION SEQ NO 001 & 002

MOHAMMED JALAL UDDIN and MOHAMMAD
M. RAHHAN,

Defendant,

ADAM SILVERA, J. :

Upon the foregoing papers, it is ordered that plaintiff's motion for consolidation is granted, that defendants' motion for summary judgment is denied and plaintiff Sun Eun Lee's cross-motion is denied for the reasons set forth below. Before the court are two motions and a cross-motion: plaintiff moves under Motion Sequence 001 for consolidation and defendant moves under Motion Sequence 002 for summary judgment, pursuant to CPLR 3212, to dismiss plaintiffs' complaint for failure to show the existence of a "serious injury" as defined under Section § 5102(d) of the Insurance Law. Plaintiffs oppose the motion. Defendants filed a counterclaim against plaintiff Sung Eun Lee for indemnification and or contribution, in full or in part, for any judgment which plaintiff may recover against the defendants. Plaintiff Sung Eun Lee now cross-moves for summary judgment, pursuant to CPLR 3212, to dismiss plaintiff's Diana Carrington's claim for failure to show the existence of a "serious injury" as defined under Section § 5102(d) of the Insurance Law. Plaintiff opposes the cross-motion.

BACKGROUND

The two cases at issue arise out of the same automobile accident which occurred on September 27, 2016, at Second Avenue and East 100th Street in the County, City, and State of New York when a motor vehicle owned by defendant Mohammed Jalal Uddin and operated by Mohammad M. Rahhan struck a vehicle operated by Sung Eun Lee transporting passenger Diana Carrington, which allegedly resulted in the serious injury of both plaintiffs. In the present action, Action #1, was filed in Civil Court, New York County Supreme Court on April 28, 2016, defendants answered timely and filed a counterclaim against plaintiff Lee and Lee answered. Action #2 was commenced on October 11, 2016 in Civil Court, Kings County by Jalal Uddin and Allaudin Ahmed against St. Lucys Roman Catholic Church and Sung Eun Lee. Defendants answered timely.

DISCUSSION

As a preliminary matter, plaintiff Lee's motion, Motion Sequence 001, for consolidation is granted. Plaintiff Lee moves to consolidate Action #1 with Action #2. Lee argues that the two actions arise out of the same accident and have common parties. CPLR §602(a) states that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated." Plaintiff Carrington opposes the motion. This action, for personal injuries resulting from a motor vehicle accident, involves the same or overlapping injuries an action entitled "Jalal Uddin and Allaudin Ahmed v. St. Lucys Roman Catholic Church and Sungeun Lee.," filed in the Supreme Court for the State of New York, Kings County, under index no. 017687/2016.

Plaintiff Carrington's opposition alleges that Action #1 has already proceeded with discovery and that the gap in discovery renders consolidation improper. The Court finds this

argument unconvincing, as discovery exchanged in Action #1 can be provided to the parties in Action #2. There are common facts pending in both cases; thus, defendant's motion to consolidate is granted to the extent that these actions are joined for discovery and trial.

Summary Judgment (Serious Injury)

Defendant's motion, Motion Sequence 002, for summary judgment, pursuant to CPLR 3212, to dismiss plaintiffs' complaint for failure to show the existence of a "serious injury" as defined under Section § 5102(d) of the Insurance Law is denied. "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 from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

In order to satisfy their burden under Insurance Law § 5102(d), a plaintiff must meet the "serious injury" threshold (*Toure v Avis Rent a Car Systems, Inc.*, 98 NY2d 345, 352 [2002] [finding that in order establish a prima facie case that a plaintiff in a negligence action arising from a motor vehicle accident did sustain a serious injury, plaintiff must establish the existence of either a "permanent consequential limitation of use of a body organ or member [or a] significant limitation of use of a body function or system"]). Additionally, on a motion for summary judgment, a defendant may establish a prima facie case against serious injury by proof that an alleged injury/limitation was not caused by the subject accident (*Franchini v Palmieri*, 1 NY3d 536, 537 [2003]).

Defendants allege that plaintiffs have each failed to demonstrate the existence of a “serious injury” as defined under Section 5102(d) of the Insurance Law. Plaintiffs and defendants provide conflicting medical reports as to significant limitation of use of a body function or system involving plaintiffs’ range of motion of several different body parts and permanence of injury. As to plaintiff Sun Eun Lee, defendants provide the affirmed report of Dr. Steven Renzoni to demonstrate that plaintiff’s cervical spine and lumbar spine have normal ranges of motion (Dfdts Mot., exh. F at 2 & 3). Plaintiffs provide the Affidavit of Dr. David Gamburg which conflicts with Dr. Renzoni’s findings and states that Lee’s cervical spine and lumbar spine have limited ranges of motion (Plaintiffs’ Aff in Op, Exh C, ¶¶ 11-16). Thus, there exists an issue of fact precluding summary judgment as to plaintiff Sun Eun Lee.

As to plaintiff Diana Carrington, there is, similarly, an issue of fact precluding summary judgment. Defendants doctor, Dr. Eric Cantos, affirmed that plaintiff Carrington’s cervical spine has a normal range of motion (Dfdts Mot., Exh K at 2-3). Plaintiffs provide the Affidavit of David Aldin, D.O. which notes that plaintiff Carrington’s cervical spine demonstrated restricted range of motion and that the injuries plaintiff “sustained to the cervical spine and lumbar spine were solely caused by the accident of September 27, 2015” (Pltf Aff in Op, Exh G, ¶¶ 13 & 26). Dr. Aldin concludes that “Diana Carrington’s injuries are permanent and she has a permanent partial orthopedic disability” (*id.*, ¶27). Given the conflicting reports, there exists an issue of fact precluding summary judgment as to plaintiff Diana Carrington such that defendants’ motion, Motion Sequence 002, is denied.

Finally, for the reasons stated above, plaintiff Sung Eun Lee’s Cross-motion for summary judgment to dismiss plaintiff’s Diana Carrington’s claim for failure to show the existence of a “serious injury” is denied.

Accordingly, it is

ORDERED that defendant's motion to consolidate is granted to the extent that these actions are joined for discovery and trial; and it is further

ORDERED that each action shall maintain separate pleadings, captions, and index numbers, with separate certificates of readiness and notes of issue; and it is further

ORDERED that discovery in this action is to proceed expeditiously; and it is further

ORDERED that defendants motion to dismiss plaintiffs' complaint for failure to show the existence of a "serious injury" of both plaintiffs as defined under Section § 5102(d) of the Insurance Law is denied; and it is further

ORDERED that plaintiff's cross-motion for summary judgment to dismiss co-plaintiff Diana Carrington's claim for failure to show a "serious injury" as defined under Section § 5102(d) of the Insurance Law is denied; and it is further

ORDERED that within 30 days of entry, Plaintiff Diana Carrington shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

Dated:

JUN 07 2018

ENTER:



Hon. Adam Silvera, J.S.C.

**HON. ADAM SILVERA
J.S.C.**