

Meyreles v White City Car & Limo Serv. Inc.
2018 NY Slip Op 32230(U)
September 11, 2018
Supreme Court, Kings County
Docket Number: 512058/16
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

WILMENIA CUESTA MEYRELES,

Plaintiff,

-against-

**WHITE CITY CAR & LIMO SERVICE INC. and
MOHAMMED Z. ALAM,**

Defendants.

DECISION / ORDER

Index No. 512058/16

Motion Seq. No. 2

Date Submitted: 6/14/18

Cal No. 12

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>10-21</u>
Answering Affirmation and Exhibits Annexed.....	<u>28</u>
Reply Affirmation.....	<u>29</u>

**Upon the foregoing cited papers, the Decision/Order on this application is
as follows:**

This is a personal injury action arising out of a motor vehicle accident.

Defendants move for summary judgment dismissing the plaintiff's complaint, pursuant to CPLR Rule 3212, on the ground that plaintiff did not sustain a "serious injury" as defined by Insurance Law § 5102(d).

On June 1, 2015 on Atlantic Avenue near Georgia Avenue in Brooklyn, plaintiff Wilmenia Cuesta Meyreles's vehicle was in an accident with a vehicle owned by defendant White City Car & Limo Service Inc. and operated by Mohammed Z. Alam. Plaintiff's bill of particulars alleges that as a result, plaintiff, who was 29 at the time of the accident, sustained multiple lumbar disc bulges at L2-L3, L3-L4 and L4-L5,

retrolisthesis at L5-S1, with a disc bulge impressing the ventral epidural space and ventral extension of the disc; lumbar facet hypertrophic changes at L4-L5 and L5-S1; lumbar myofascial syndrome; lumbar facet syndrome, and lumbar strain/sprain. Plaintiff received injections for the pain on a number of occasions. Plaintiff also alleges she sustained five cervical disc bulges, many with impingement and received injections, both steroid and trigger point injections, for the pain, on a number of occasions.

Defendants have made a prima facie showing of their entitlement to summary judgment based upon the affirmed medical reports of Jay M. Walshon, M.D., Michael J. Carciente, M.D., and Darren Fitzpatrick, M.D., who all found that plaintiff's claimed injuries are not causally related to the subject accident (*see White v Dangelo Corp.*, 147 AD3d 882 [2d Dept 2017]; *Young Chan Kim v Hook*, 142 AD3d 551, 552 [2d Dept 2016]).

Jay M. Walshon, M.D., a fellow in the American College of Emergency Physicians, reviewed the emergency room records and concludes that the injuries alleged in the plaintiff's bill of particulars are unsupported by the plaintiff's own complaints to the ER staff, and are unsupported by their findings, plaintiff's examination and the radiographic studies performed. He states that, other than strains/sprains, the claimed injuries do not have an acute traumatic origin and could not be causally related to the accident of June 1, 2015.

Michael J. Carciente, M.D., a board certified neurologist, examined plaintiff on October 16, 2017 and reports that she was completely normal neurologically, with negative results on all tests, and that there is no correlation between the alleged injuries in the MRI reports and his exam. Dr. Carciente notes that disc bulges are quite common

in completely asymptomatic individuals and are not caused by traumatic injuries.

In addition, Darren Fitzpatrick, M.D., a board certified radiologist, reviewed the MRI films of plaintiff's lumbar spine, taken approximately three months after the accident. He found minimal, multilevel disc bulging which he opines is degenerative, with "no traumatic etiology."

Finally, plaintiff's own testimony and bill of particulars indicates that she was confined to bed and home for only five days after the accident and missed only five days of work (Exhibit D at 51, 69). This constitutes a prima facie showing that the plaintiff did not sustain a serious injury under the 90/180-day category (*see Strenk v Rodas*, 111 AD3d 920 [2d Dept 2013]; *Hamilton v Rouse*, 46 AD3d 514, 516 [2d Dept 2007]).

However, the court finds that plaintiff has overcome the motion and raised a triable issue of fact, based upon the affirmation of plaintiff's treating doctor, Mark Gladstein, M.D., who examined plaintiff most recently on March 13, 2018. He reports that plaintiff has significant limitations in the range of motion in her lumbar and cervical spine. He concludes that, given that plaintiff was asymptomatic prior to the accident, and based upon his objective examination and her MRI tests and her complaints of pain, that her injuries are directly related to the June 1, 2015 accident. He opines that the heavy impact she received from the accident is a competent producing cause of the discogenic injuries demonstrated in the MRIs (*see White v Dangelo Corp.*, 147 AD3d 882 [2d Dept 2017]; *Young Chan Kim v Hook*, 142 AD3d 551, 552 [2d Dept 2016]; *Greenberg v Macagnone*, 126 AD3d 937, 938 [2d Dept 2015]).

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the decision and order of the court.

Dated: September 11, 2018

ENTER:



Hon. Debra Silber, J.S.C.

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