

Dubovaya v Tinizhanay
2018 NY Slip Op 32252(U)
September 11, 2018
Supreme Court, Kings County
Docket Number: 505782/13
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

SOFIYA DUBOVAYA and YELENA DUBOVAYA,

Plaintiffs,

-against-

**JAIME R. TINIZHANAY, AMBOY BUS CO. INC. and
DMITRIY GRINSHPUN,**

Defendants.

DECISION / ORDER

Index No. 505782/13

Motion Seq. No. 6, 7

Date Submitted: 6/14/18

Cal No. 15, 16

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant Dimitriy Grinshpun's motion for summary judgment and defendants Jamie R. Tinizhanay and Amboy Bus Co. Inc.'s motion for summary judgment.

Papers	Doc. No. /NYSCEF Doc.
Notices of Motion, Affirmations and Exhibits Annexed....	<u>1-11¹, 32-43</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>46-55</u>
Reply Affirmation.....	<u>53-56, 67</u>

**Upon the foregoing cited papers, the Decision/Order on these motions is
as follows:**

This is a personal injury action arising out of a motor vehicle accident. Defendant Dimitriy Grinshpun moves (seq 6) and defendants Jamie R. Tinizhanay and Amboy Bus Co. Inc. move (seq 7) separately for summary judgment dismissing the plaintiffs' complaint, pursuant to CPLR Rule 3212, on the ground that plaintiffs did not sustain "serious injuries" as defined by Insurance Law § 5102(d).

On September 28, 2010, at the intersection of 1st Avenue and East 20th Street in

¹Molton Sequence 6 was filed by prior counsel for Grinshpun, who had opted out of e-filing, so it was not efiled.

Manhattan, plaintiffs Sofiya Dubovaya and Yelena Dubovaya were passengers in a vehicle driven by defendant Dmitriy Grinshpun. His vehicle came into contact with a vehicle driven by defendant Jaime R. Tinizhanay and owned by defendant Amboy Bus Co. Inc. Plaintiff Yelena Dubovaya is the wife of defendant Grinshpun. She was a front seat passenger and Sofiya Dubovaya, Yelena's mother, was a back seat passenger. The plaintiffs' bill of particulars alleges that Sofiya sustained multiple disc herniations, a possible torn labrum of the left shoulder and a torn meniscus in the left knee as a result of the accident. She received epidural injections and arthroscopic left knee surgery. The bill of particulars alleges that Yelena sustained a disc bulge at C4-5, for which she received epidural injections, right shoulder joint effusion and right knee traumatic chondromalacia.

Defendants have made a prima facie showing of their entitlement to summary judgment by showing that neither plaintiff sustained "serious injuries" as a result of this accident, that their strains and strains are resolved and their current ranges of motion are normal. (*see Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v Eyler*, 79 NY2d 955, 956-957 [1992]). Dr. Pierce J. Ferriter, an orthopedist who examined both plaintiffs found that they both had normal ranges of motion and concluded that their sprains/strains had resolved, with no objective evidence of a causally related disability (*see Meely v 4 G's Truck Renting Co.*, 16 AD3d 26, 30 [2d Dept 2005]). Yelena testified that she was confined to her bed and home after the accident, but she was 39 weeks pregnant on the date of the accident and delivered her baby without any complications shortly after the accident (Exhibit F at 21). Although she missed several months of

work, she was on a planned maternity leave (Exhibit F at 30). She testified that she cut back on her hours after returning to work, but it was not medically required. (Exhibit F at 32) (see *Sougstad v Meyer*, 40 AD3d 839, 840 [2d Dept 2007] ["Although the injured plaintiff also claimed to have missed seven months of work following the accident, he failed to tender sufficient objective medical evidence relating his inability to work to the injuries allegedly sustained in the subject accident"]). Sofiya testified that she was unemployed at the time the accident (Exhibit H at 7-8).

In opposition, plaintiffs have both overcome the motion and raised a triable issue of fact, based upon the affirmations of Leon Reyfman, MD (see *White v Dangelo Corp.*, 147 AD3d 882 [2d Dept 2017]; *Young Chan Kim v Hook*, 142 A.D.3d 551, 552 [2d Dept 2016]; *Khaimov v Armanious*, 85 A.D.3d 978, 978–79 [2d Dept 2011]; *Duarte v Ester*, 247 AD2d 356, 357 [2d Dept 1998])). He examined Sofiya most recently on March 14, 2018, finding significant limitations in the range of motion in her shoulder and lumbar spine. He states she has sustained lumbar disc displacement, caused by the September 28, 2010 accident, which is permanent, and she has a significant and serious loss of function in her lower back which constitutes a permanent partial disability. Similarly, Dr. Reyfman last examined Yelena on March 14, 2018 and found significant limitations in the range of motion in her cervical spine, with a diagnosis of cervical disc displacement caused by the September 28, 2010 accident, which is permanent, and that she has a significant and serious loss of functional capacity in her neck, which constitutes a permanent partial disability.

Accordingly, it is

ORDERED that the motions are denied.

This constitutes the decision and order of the court.

Dated: September 11, 2018

ENTER:



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**