

**Gluzman v New York City Hous. Auth.**

2019 NY Slip Op 32324(U)

August 1, 2019

Supreme Court, New York County

Docket Number: 450730/2016

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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SHAWN GLUZMAN,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, LAUREEN HINTZ, EARL BRIAN, HUGO AUQUILLA

Defendant.

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INDEX NO. 450730/2016
MOTION DATE 05/07/2019
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ORDERED that defendants' motion for summary judgment and to dismiss plaintiff's complaint is denied. Before the court is defendants Earl W Brian III and Hugo G. Auquilla's motion for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendants to dismiss the Complaint of plaintiff Shawn Gluzman for failure demonstrate that plaintiff has suffered a "serious injury" as defined under Section 5102(d) of the Insurance Law.

The suit at bar stems from a four-car chain collision which occurred on December 18, 2013 when a vehicle operated by plaintiff was rear ended by a vehicle operated by defendant Laureen Hintz which was rear ended by a vehicle operated by defendant Hugo G Auquilla which allegedly resulted in the serious injury of plaintiff.

"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”]).

The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dep’t 1992], citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 [1st Dep’t 1990]). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence (*See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 [1979]).

Here, defendants allege that plaintiff did not sustain a serious injury as a result of the underlying accident. Defendants allege that plaintiff’s injuries to his cervical spine, lumbar spine, and right shoulder were not causally related to the accident at issue. In support of their motion defendants submit the May 2, 2019, MRI review report conducted by Dr. Robert F. Traflet in which the doctor reviewed MRI images conducted on March 26, 2014, and opined that plaintiff’s

MRI revealed no cervical spine, lumbar spine, or right shoulder findings causally related to the accident at issue (Mot, Exh J).

Further, defendants attach the October 2018 medical report of Dr. Herbert S. Sherry (Mot, Exh O). In his report, Dr. Sherry lists the range of motion of plaintiff's cervical spine and lumbar spine but does not list what the normal ranges of motion. The Appellate Division, First Department, has consistently held that "[t]he report of the doctor...is deficient because he...failed to indicate what the normal range of motion would be" (*Nagbe v Minigreen Hacking Group*, 22 AD3d 326, 327 [1st Dept 2005]). Thus, the Court deems Dr. Sherry's report as deficient and further notes that upon review of plaintiff's listed range of motion as compared to normal ranges of motion, plaintiff suffered a loss of range in motion to both the cervical and lumbar spine.

Defendants' motion contains evidence of a serious injury as a result of the accident at issue. "A defendant moving for summary judgment on the issue of whether the plaintiff sustained a serious injury has the initial burden of presenting competent evidence establishing that the injuries do not meet the threshold" (*Linton v Nawaz*, 62 AD3d 434, 439 [1st Dept 2009] citing *Wadford v Gruz*, 35 AD3d 258 [1st Dept 2006]). Defendants have failed to satisfy their burden as defendants' doctor opines that the injuries at issue are causally related to the underlying accident. Thus, defendants have failed to meet their burden precluding summary judgment.

Accordingly, it is

ORDERED that defendants' motion for summary judgment to dismiss plaintiff Shawn Gluzman's Complaint on the grounds that plaintiff allegedly has not sustained a "serious injury" as defined in 5102 of the Insurance Law is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

8/1/2019  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	