

Blalock v Sagni

2019 NY Slip Op 34441(U)

April 3, 2019

Supreme Court, Westchester County

Docket Number: Index No. 63191/17

Judge: Linda S. Jamieson

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NYSCEF DOC. NO. 33

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To commence the statutory time period for appeal of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp _____ Dec x Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON
-----X
SHAYLA BLALOCK,

Plaintiff,

-against-

Index No. 63191/17

DECISION AND ORDER

YOREYLINA SAGNI and ARMIDA A. ESPINOZA,

Defendants.

-----X

The following paper numbered 1 was read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation, and Exhibits	1

Plaintiff's motion seeks summary judgment on liability and serious injury in this car accident case. Despite proper service, the Court received no opposition from defendants. This is not surprising, given the facts in this rear-end car accident action.

There is no dispute that plaintiff was stopped when she was rear-ended by defendant Sagni. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party. To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff must demonstrate that the

defendant was negligent and that the plaintiff was free of comparative fault." *Valentin v. Parisio*, 119 A.D.3d 854, 855, 989 N.Y.S.2d 621 (2d Dept. 2014). Here, plaintiff has established her prima facie burden with respect to liability. Since defendants failed to oppose the motion, they did not rebut this prima facie case. Accordingly, the Court grants plaintiff's motion for summary judgment on liability.

Turning to the aspect of the motion on injury, Section 5102(d) of the Insurance Law governs car accident cases such as this. That section provides that

"Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

Plaintiff alleges that she was prevented from performing her usual and customary activities for at least 90 out of the 180 days following the accident. In support of her assertion, she states that she was not able to return to work after the accident for 120 days, and that she cannot perform some of her usual

activities, like running and household duties. This is enough to establish plaintiff's prima facie case.

Defendants have no response, meritorious or otherwise, to this prima facie case. Moreover, their experts' reports, submitted by plaintiff, only opine on plaintiff's present condition, which is irrelevant for the 90/180 standard. "The reports of defendants' experts, based on examinations performed more than two years after the accident and addressed only to the permanency of plaintiff's injuries, failed to make a prima facie showing that plaintiff had not sustained a 90/180 injury." *Bejaran v. Perez*, 78 A.D.3d 571, 572, 911 N.Y.S.2d 62, 63 (1st Dept. 2010). See also *Alexandre v. Dweck*, 44 A.D.3d 597, 597, 848 N.Y.S.2d 181, 182-83 (2d Dept. 2007) ("The appellants' physicians conducted their examinations of the plaintiff more than 2 ½ years after the incident. Neither expert related his findings to this category of serious injury for the period of time immediately following the accident."). The Court thus finds that defendants have failed to rebut plaintiff's prima facie case on the 90/180 aspect of serious injury. Accordingly, the Court grants plaintiff's motion with respect to serious injury as well.

The parties are directed to appear for a Settlement Conference in the Settlement Conference Part on April 30, 2019 at


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9:15 a.m. in Courtroom 1600.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
April 3, 2019


HON. LINDA S. JAMIESON
Justice of the Supreme Court

To: Sonin & Genis
Attorneys for Plaintiff
1 Fordham Plaza, #907
Bronx, NY 10458

Law Office of Bryan M. Kulak
90 Crystal Run Rd., #409
Middletown, NY 10941