

Alunaimat v Harris

2020 NY Slip Op 33157(U)

August 24, 2020

Supreme Court, Bronx County

Docket Number: 27785/17E

Judge: Ben R. Barbato

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**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM- PART 14**

Present: Honorable Ben R. Barbato

AHMED ALUNAIMAT,

Plaintiff,

-against-

BOBTAIN O. HARRIS,

Defendant.

DECISION/ORDER

Index No.:27785/17E

Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion to dismiss:

Papers	Numbered
Notice of Motion, Affirmation and Exhibits Annexed	1
Affirmation in Opposition and Exhibit Annexed	2
Affirmation in Reply	3

The instant action sounds in personal injury arising from a motor vehicle accident occurring on February 27, 2017, at or near the intersection of South 13th Avenue and West Street, in the County of the Westchester, City of Mount Vernon and State of New York. Defendant, Bobtain O. Harris moves this court for an Order pursuant to CPLR §3212 awarding Summary Judgment claiming that the Plaintiff, Ahmad Alnuaimat, cannot meet the serious injury threshold requirement mandated by Insurance Law §5104.

Defendant submits the Affirmed report of Dr. John R. Denton, a Board Certified Orthopedic Surgeon, who examined the Plaintiff on May 13, 2019. Dr. Denton's examination of Plaintiff's cervical spine revealed limited ranges of motion in all planes, lumbar spine revealed a superior range during flexion by 30 degree otherwise normal ranges of motion were indicated. Range of motion of the right wrist revealed a 20 degree superior range of motion on flexion and a

10 degrees on extension, otherwise the examination of Plaintiff's right wrist revealed ranges of motion to be within normal limits as did the examination of the right hand. Range of motion of the left wrist revealed a 20 degree superior range of motion on flexion and a 10 degree on extension, otherwise the examination of Plaintiff's left wrist revealed ranges of motion to be within normal limits as did the examination of the left hand. Dr. Denton's examination of Plaintiff's right knee revealed a 20 degree deficit on flexion with otherwise normal ranges of motion and all testing rendering negative results. The examination of Plaintiff's left knee revealed a 30 degree deficit on flexion with otherwise normal ranges of motion and all testing rendering negative results. Dr. Denton notes prior left knee surgery evidenced by healed arthroscopic portals. Dr. Denton, opines that Plaintiff sustained cervical, thoracic and lumbar sprain and strain along with left knee sprain and strain, which at the time of the examination had resolved. Dr. Denton further opines that there is a causal relationship between the injuries sustained and the motor vehicle accident of February 27, 2017. Dr. Denton opines that Plaintiff's pre-existing injuries were aggravated by the instant accident.

Plaintiff submits the certified medical records from Medalliance Medical Health Services which reveal a loss of range of motion in the cervical and lumbar spine. Plaintiff also submits a certified copy of the MRI of Plaintiff's left knee which indicates a lateral subluxation of the patella (dislocation of the kneecap) with full-thickness cartilage fissures (separation of the layers of the cartilage). The MRI of the cervical spine reveals a central herniation at C5/6 with slight bulging at C6/7 and a straightening of the cervical lordotic curve. The MRI of the lumbar spine reveals broad disc bulges at L4/5 and L5/S1. EMG/NCV of the lower extremities reveal bilateral L5 radiculopathy, with superimposed mild diabetic peripheral neuropathy. Plaintiff also submits the certified record of Avicenna Ambulatory Center, Dr. Richard Gasalberti, dated January 17,

2018, which indicates that Plaintiff underwent a Caudal Epidural Injection under anesthesia. Plaintiff submits the Affirmed report of Dr. Ali Guy who opines that Plaintiff as a result of the February 27, 2017, exacerbated those injuries sustained in a March 20, 2015 accident. Those exacerbated injuries include a preexisting C5/6 bulge which lead to a full herniation, preexisting C6/7 disc herniation, bilateral L5 radiculopathy, left C5/5 cervical radiculopathy with a new radiculopathy at the right C5/6 level, left knee traumatic chondromalacia of a normal natural aging arthritis and a full thickness cartilage fissure with patellar subluxation a new injury which Dr. Guy casually related to the February 27, 2017 accident.

It is settled law that on a motion for summary judgment, the moving party has the initial burden of demonstrating, by admissible evidence, their right to judgment. The burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial. CPLR §3112(b); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Singer v. Friedman*, 220 A.D.2d 574(2d Dept 1995). Further, issue finding rather than issue determination is the function of the court on motions for summary judgment. *Esteve v. Abad*, 271 A.D. 725 (1st Dept. 1947); *Stillman v. Twentieth Century Fox F. Corp.*, 3 N.Y.2d 395 (1957); *Clearwater Realty Co. v. Hernandez*, 256 A.D.2d 100 (1st Dept. 1998). Additionally, the role of the court is not to resolve issues of credibility. *Knepka v. Tallman*, 278 A.D.2d 811(4th Dept. 2000) Since summary judgment is a drastic remedy it should not be granted where there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223(1978) Thus where the existence of an issue of fact is arguable summary judgment should not be granted. *Stone v. Goodson*, 8 N.Y.2d 8 (1960). In the instant case viewing the evidence in the light most favorable to the party opposing the motion for summary judgment, namely the Plaintiff, there exists a triable issue of material fact for determination by a jury. See:

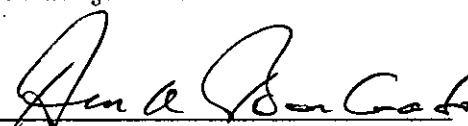
Bacon v. County of Westchester, 149 A.D.2d 451 (2nd Dept. 1989); *Mutschnik v. Summit*

Brokerage Corp., 148 A.D.2d 427 (2nd Dept. 1989)

Therefore it is

ORDERED, that Defendant, Bobtain O. Harris' motion for an Order pursuant to CPLR §3212 granting summary judgment dismissing the Plaintiff's Complaint for failure to meet the serious injury threshold requirement mandated by Insurance Law §5104 is **denied**.

Dated: August 24, 2020



Hon. Ben R. Barbato, J.S.C.