

Velasquez v Vadi

2020 NY Slip Op 33158(U)

August 3, 2020

Supreme Court, Bronx County

Docket Number: 28669/16E

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

ANA VELASQUEZ,

Plaintiff,

-against-

JULIO VADI, NELSON TAMARIZ SANTANA, and
SRM MANAGEMENT CORP.,

Defendants.

DECISION/ORDER

Index No.: 28669/16E

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 Exhibits Annexed	2

The above Motion has been transferred from Justice MaryAnn Briganti on July 2, 2020 to this court pursuant to Order of the Administrative Judge and shall be decided by this court pursuant to CPLR§9002.

The instant action sounds in personal injury arising from a motor vehicle accident occurring on January 28, 2014, on River Avenue at or near its intersection with 153rd Street in the County of Bronx, City and State of New York. Plaintiff, Taisha Ana Velasquez, at the time of the accident was a passenger in the front seat of that vehicle owned and operated by the Defendant, Julio Vadi, which vehicle was struck by that vehicle operated by the Defendant, Nelson Tamariz Santana and owned by Defendant, SRM Management Corp. Defendants, Nelson Tamariz Santana and SRM Management Corp., move this court for an Order pursuant to CPLR §3212 awarding Summary Judgment in favor of Defendants dismissing Plaintiff's Complaint claiming that the Plaintiff cannot meet the serious injury threshold requirement mandated by Insurance Law §§ 5102(d) and 5104(a).

Defendants offer the Affirmed report of Dr. Timothy G. Haydock, Board Certified in Emergency Medicine, dated October 29, 2017 in which Dr. Haydock states that his review of those medical records provided from the Lincoln Hospital Emergency Department, the Police Report and Plaintiff's Bill of Particulars do not indicate that Plaintiff sustained any significant injury as a result of the subject motor vehicle accident.

Defendants also submit the Affirmed report of Dr. Mark J. Decker, a Board Certified Radiologist who reviewed the CT Scans and MRIs of Plaintiff's lumbar spine, left shoulder, and cervical spine. Dr. Decker opines that all of Plaintiff's alleged injuries were long standing due to degeneration and not causally related to the subject accident.

Defendants submit the Affirmed report of Dr. Robert S. April, a Board Certified Neurologist, who examined Plaintiff on September 13, 2018. Dr. April reports that based upon a reasonable degree of medical certainty that the Plaintiff presented with gait ataxia with proprioceptive dysfunction not related to the accident. He further opines that Plaintiff presents with no neurological diagnosis or disability causally related to the subject accident.

Defendants submit the Affirmed report of Dr. Shanker Krishnamurthy, Orthopedist, who examined the Plaintiff on September 19, 2018. Dr. Krishnamurthy, determined that Plaintiff did not demonstrate any orthopedic disability with respect to any anatomic sites that are claimed as part of the injuries sustained in the subject motor vehicle accident. His review of the radiological studies show chronic changes in the cervical and lumbar spine with no evidence of acute injury. Dr. Krishnamurthy's review of the MRI of the left shoulder indicates that it does not reveal acute injury.

Plaintiff submits the Affirmations of Dr. Mark Gladstein,, Rafael Gomez, M.D., Andrew Dowd, M.D. Kenneth McCulloch, M.D., Brian Haftel, M.D., David Ludwig, M.D., and Ron

Mark, M.D. and the Affidavit of Paul V Scarborough, D.C. All medical providers present the injuries and treatment rendered the Plaintiff including MRI findings, limited range of motion findings, epidural injections with trigger point injections and a causal relationship between the injuries and the happening of the accident.

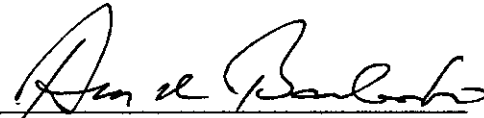
It is settled law that on a motion for summary judgment, the moving party has the initial burden of demonstrating, by admissible evidence, their right to judgment. The burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting 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 Plaintiffs, 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 Defendants, Nelson Tamariz Santana and SRM Management Corp.,

motion for an Order pursuant to CPLR §3212 granting summary judgment dismissing the Plaintiffs' complaint for failure to meet the serious injury threshold requirement mandated by Insurance Law §§ 5102(d) and 5104(a) is **denied**.

Dated: August 3, 2020



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