

Plonquet v CK Limousine Serv.
2020 NY Slip Op 33436(U)
October 14, 2020
Supreme Court, Kings County
Docket Number: 504046/2018
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 14th day of October 2020.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

-----X

MCRANE PLONQUET,

Plaintiff,

Index No.: 504046/2018

DECISION & ORDER

-against-

CK LIMOUSINE SERVICE and GURDEEP SINGH,

Defendant.

-----X

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

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	_____ 12 - 19 _____
Opposing Affidavits (Affirmations) _____	_____ 47 - 54 _____
Reply Affidavits (Affirmations) _____	_____ 56 _____

Defendants, CK Limousine Service and Gurdeep Singh, move by notice of motion, sequence number one, pursuant to CPLR § 3212 for summary judgment, dismissing plaintiff's complaint on the grounds that plaintiff did not sustain a serious injury. Plaintiff, McRane Plonquet, opposes this application.

Plaintiff allegedly sustained personal injuries on October 28, 2017, as a result of a motor vehicle accident. In his bill of particulars, plaintiff alleged, *inter alia*, injuries to his right shoulder, cervical spine, lumbar spine and right knee (*see* NYSCEF Doc. # 15 at

001

¶ 10).¹ Plaintiff allegedly sustained a tear to his rotator cuff in his right shoulder, a torn meniscus in his right knee, and disc bulges in his lumbar and cervical spine. Plaintiff alleged that he was confined to bed and home for a period of one week (*see id.* at ¶ 12). Plaintiff underwent surgery on his right knee in January 2018. Plaintiff further alleged that he sustained “permanent loss of use of a body organ, member, function or system; [p]ermanent consequential limitation... [s]ignificant limitation...” and a “[m]edically determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts, which constitutes his usual and customary daily activities for 90 days during the 180 days following the occurrence” (*id.* at ¶ 20).

In the instant case defendants failed to meet their burden met their prima facie burden and established that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d). Although defendants submitted competent medical evidence establishing that plaintiff did not sustain a permanent loss, a significant limitation or a permanent consequential limitation within the meaning of Insurance Law, “[t]he papers submitted by the defendant failed to eliminate triable issues of fact regarding the plaintiff’s claim, set forth in the bill of particulars, that he sustained a serious injury under the 90/180–day category of Insurance Law § 5102(d)” (*Reid v. Edwards-Grant*, -- A.D.3d --, 2020 N.Y. Slip Op. 05247 [2 Dept., 2020]).

¹ This Court notes that NYSCEF Doc. # 14 in support of defendant’s motion is entitled “BILL OF PARTICULARS”. However, this exhibit includes the summons and verified complaint. The Bill of Particulars was filed as NYSCEF Doc. # 15 and mislabeled as “ANSWER”.

In support of their motion, defendants provided plaintiff's deposition transcript (*see* NYSCEF Doc. # 17), an affirmed report from orthopedic surgeon Pierce Ferriter, M.D. (*see* NYSCEF Doc. # 18), and a sworn report from radiologist Scott A. Springer, D.O., D.A.B.R. who reviewed plaintiff's MRI examinations (*see* NYSCEF Doc. # 19). Dr. Ferriter examined plaintiff on November 18, 2019, where he measured range of motion with a handheld goniometer. He found normal range of motion in plaintiff's cervical spine and lumbar spine (*see* NYSCEF Doc. # 18). The right shoulder measurements were normal, except for a 12.5% loss in internal rotation (70 degrees measured/ 80 degrees normal). The right knee measured normal range of motion and healed surgical portals (*see id.*). Dr. Ferriter found that the strain/sprain in the cervical spine, lumbar spine and right shoulder were resolved and the status post right knee surgery on January 30, 2018 was healed. He opined that "there is no orthopedic disability, permanency or residuals" (*id.*).


However, plaintiff testified that he was a student at the time of the accident and that he missed a semester and a half of school after the accident (*see* NYSCEF Doc. # 17 at 32-33). He testified that he was not able to attend classes at all (*see id.* at 33). When asked if a doctor told him he should not attend school he replied, "not precisely" (*id.* at 33). The testimony is conflicting about whether this caused his graduation to be delayed (*see id.*).

As defendants failed to meet their burden, this Court “need not consider the sufficiency of the opposition papers” (*Seidler v. Knopf*, 186 A.D.3d 889, -- N.Y.S.3d – [2 Dept., 2020]).

Accordingly, the defendants’ motion for summary judgment is denied as questions of fact exist as to whether plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d).

The foregoing constitutes the decision and order of this Court.

ENTER:



Hon. Lara J. Genovesi
J.S.C.

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