

Hyatt-Reid v Raimnov

2020 NY Slip Op 35480(U)

November 20, 2020

Supreme Court, Queens County

Docket Number: Index No. 717614/2018

Judge: Robert J. McDonald

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**11/20/2020
12:47 PM**

**COUNTY CLERK
QUEENS COUNTY**

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

AVIANNE A. HYATT-REID, Index No.: 717614/2018

Plaintiff, Motion Date: 11/19/2020

- against - Motion Nos.: 16 & 17

NODIRJON RAIMNOV, YCL CORP., UBER USA Motion Seqs.: **3 & 4**

LLC, KEVIN MIN KO, WANYING CHENG and

GREGORY WILSON,

Defendants.

- - - - - x

The following electronically filed documents read on these motions by defendants NODIRJON RAIMNOV and YCL CORP. (**seq. nos. 3 & 4**) for an order pursuant to CPLR 3212, granting defendants summary judgment and dismissing the complaint of plaintiff on the ground that plaintiff did not sustain a serious injury within the meaning of Insurance Law §§ 5104(a) and 5102(d):

	<u>Papers</u>
	<u>Numbered</u>
Notice of Motion-Affirmation-Exhibits.....EF	75 - 84
Affirmation in Opposition-Exhibits.....EF	100 - 104
Notice of Motion-Affirmation-Exhibits.....EF	85 - 96
Affirmation in Opposition-Exhibits.....EF	105 - 109

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on April 18, 2018. As a result of the accident, plaintiff alleges that she sustained serious injuries to her cervical spine, lumbar spine, and right knee.

Plaintiff commenced this action by filing a summons and complaint on November 15, 2018. Moving defendants Nodirjon Raimnov and YCL Corp. (hereinafter defendants) joined issue by service of a verified answer on January 31, 2019. Defendants now moves for an order pursuant to CPLR 3212, dismissing the complaint on the ground that the injuries claimed by plaintiff fail to satisfy the serious injury threshold requirement of Section 5102(d) of the Insurance Law.

Plaintiff appeared for an examination before trial on February 20, 2020 and testified that she was involved in the subject accident. She declined medical assistance of an ambulance. She left the scene of the accident and drove her vehicle to her job. She has been working for Mount Sinai Hospital since 2012. She is a full time clerk in the detox department. She works five days a week and approximately seven and a half hours per day. She was able to work the day after the accident. She continued to work her full time schedule up until her surgery to her right knee on June 11, 2018. She underwent physical therapy for approximately seven months. After her knee surgery, she was out of work for one month. When she returned back to work, she was able to perform the same work duties and same full time work schedule as prior to the accident, without limitations. At no point in time was she confined to her home as a result of the alleged injuries sustained in the subject accident.

Thomas P. Nipper, M.D. performed an independent medical examination on May 28, 2020. Plaintiff presented with current complaints of pain in her right knee. Plaintiff reported that she lost five weeks from her work due to her injuries. Dr. Nipper identifies the records reviewed prior to rendering his report. Dr. Nipper performed range of motion testing with a goniometer and found normal ranges of motion in plaintiff's cervical spine, lumbar spine, and bilateral knees. All other objective testing performed were negative. Dr. Nipper concludes that the injuries have fully resolved. There are no indications for further orthopaedic treatment including physical therapy. Plaintiff did not sustain any significant or permanent injury as a result of the subject accident.

Scott A. Spinger, M.D. reviewed the MRIs of plaintiff's lumbar spine and cervical spine and found no posttraumatic changes causally related to the subject accident.

Based on the above, defendants contend that the evidence submitted is sufficient to establish, prima facie, that plaintiff has not sustained an injury which resulted in a significant disfigurement; fracture; 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 organ, member, function or system; or a medically determined injury or impairment of a nonpermanent nature which prevented her for not less than 90 days during the immediate 180 days following the occurrence, from performing substantially all of her usual daily activities.

On a motion for summary judgment, where the issue is whether the plaintiff has sustained a serious injury under the no-fault law, the defendant bears the initial burden of presenting competent evidence that there is no cause of action (Wadford v Gruz, 35 AD3d 258 [1st Dept. 2006]). "[A] defendant can establish that a plaintiff's injuries are not serious within the meaning of Insurance Law § 5102 (d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim" (Grossman v Wright, 268 AD2d 79 [1st Dept. 2000]). Whether a plaintiff has sustained a serious injury is initially a question of law for the Court (Licari v Elliott, 57 NY2d 230 [1982]).

Where defendant's motion for summary judgment properly raises an issue as to whether a serious injury has been sustained, it is incumbent upon the plaintiff to produce evidentiary proof in admissible form in support of his or her allegations. The burden, in other words, shifts to the plaintiff to come forward with sufficient evidence to demonstrate the existence of an issue of fact as to whether he or she suffered a serious injury (see Gaddy v Eyler, 79 NY2d 955 [1992]; Zuckerman v City of New York, 49 NY2d 557 [1980]; Grossman v Wright, 268 AD2d 79 [2d Dept 2000]).

Here, defendants failed to eliminate triable issues of fact as to whether plaintiff sustained a serious injury under the significant disfigurement category of the Insurance Law. The Verified Bill of Particulars indicates that plaintiff sustained a significant disfigurement due to the scarring following her knee surgery. However, defendants' submissions fail to address such. Since defendants failed to meet their prima facie burden, it is unnecessary to determine whether the papers submitted in opposition were sufficient to raise a triable issue of fact (see Ali v Williams, 187 AD3d 1107 [2d Dept. 2020]).

In any event, even if this Court were to find that defendants established a prima facie case, plaintiff raised triable issues of fact as to whether she sustained a serious injury by submitting, inter alia, her medical records and the affirmed medical report from Richard Pearl, M.D. attesting to the fact that plaintiff sustained injuries as a result of the subject accident, finding that plaintiff had significant limitations in ranges of motion both contemporaneous to the accident and in a recent examination, and concluding that the limitations are permanent and causally related to the accident (see Perl v Meher, 18 NY3d 208 [2011]; David v Caceres, 96 AD3d 990 [2d Dept. 2012]; Martin v Portexit Corp., 98 AD3d 63 [1st Dept. 2012]).

Moreover, plaintiff's own affidavit, indicating, inter alia, that she avoids wearing shorts, skirts, and dresses, was much slower and less diligent at work, and cannot run or do kickboxing twice a week anymore, raises triable issues of fact as to the 90/180-day category.

Accordingly, and for the reasons above, it is hereby

ORDERED, that defendants NODIRJON RAIMNOV and YCL CORP.'s motions (**seq. nos. 3 & 4**) are denied.

Dated: November 20, 2020
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

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