

Villalona v Camara

2020 NY Slip Op 35515(U)

August 31, 2020

Supreme Court, Bronx County

Docket Number: Index No. 33335/18E

Judge: Ben R. Barbato

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 14

-----X
Marino Villalona

Index No. 33335/2018E

-against-
Nouhan Camera

Hon. HON. BEN. R. BARBATO, J.S.C.

Justice Supreme Court

-----X
The following papers numbered 1 to 3 were read on this motion (Seq. No. 1)
for SUMMARY JUDGMENT DEFENDANT noticed on _____

Submitted on 8/28/2020

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). <u>1</u>
Answering Affidavit and Exhibits	No(s). <u>2</u>
Replying Affidavit and Exhibits	No(s). <u>3</u>

Upon the foregoing papers, it is ordered that this motion is

**Motion is decided in accordance
with memorandum decision filed
herewith**

Motion is Respectfully Referred to Justice:
Dated: _____

Dated: 8/31/2020

Hon. *Ben R Barbato*
HON. BEN. R. BARBATO, J.S.C. J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

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

Present: Honorable Ben R. Barbato

MARINO VILLALONA,

Plaintiff,

-against-

NOUHAN CAMARA,

Defendant.

DECISION/ORDER

Index No.:33335/18E

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

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

The instant action arises out of an automobile accident which occurred on May 17, 2018, on East 166th Street at or near its intersection with Findlay Avenue, in the County of Bronx, City and State of New York. Defendant, Nouhan Camara, seeks an Order pursuant to CPLR§3212 granting summary judgment and dismissing Plaintiff's Complaint claiming that the Plaintiff, Marino Villalona, fails to meet the serious injury threshold requirements mandated by Insurance Law §§ 5104(a) and 5102(d).

Defendants submit the affirmed report of Dr. Steven A. Renzoni, a Board Certified Orthopaedic Surgeon, who performed an orthopedic examination of the Plaintiff on January 13, 2020. Dr. Renzoni reports that he performed range of motion tests on Plaintiff's cervical and lumbar spine, right and left shoulders and right and left knees all of which were determined to be within normal limits except for abduction in the right shoulder which showed a deficit of Thirty (30) degrees. All other testing performed by Dr. Renzoni of Plaintiff's cervical and lumbar spine, right and left shoulders and right

and left knees rendered negative results. Dr. Renzoni opines that as a result of the accident Plaintiff suffered cervical, lumbar and right knee sprains and strains which at the time of his examination had resolved and notes status post right shoulder surgery which had healed by the time of his examination of Plaintiff.

Defendant also presents the affirmed report of Dr. Darren Fitzpatrick, a Board Certified Radiologist, who reviewed the MRIs of Plaintiff's cervical and lumbar spine and states that they revealed degenerative disc disease unrelated to trauma. His review of the MRI of Plaintiff's right shoulder shows non traumatic diffuse rotator cuff tendinosis resulting from chronic overuse.

Plaintiff submits the affirmed report of Dr. Maria Ciechorska, who states that she first examined the Plaintiff at her office on June 9, 2018. Dr. Ciechorska examination included range of motion testing which revealed limited range of motion of the cervical and lumbar spine. Review of the MRI of Plaintiff's right shoulder showed a rotator cuff tear, labral injury and associated bursitis and biceps tenosynovitis; the MRI of the right knee disclosed medial and lateral meniscal tear additional ACL and PCL injuries, quadriceps and patellar tendinitis with joint effusion; the MRI of the cervical spine revealed disc herniations at C3/4, C4/5, C5/6 and C6/7 and disc bulges at C2/3 and C7/T1 with spinal canal and cord impingement; and the MRI of the lumbar spine revealed L4/5 and L5/S1 with annular tear, L2/3 and 3/4 bulges, spinal canal and nerve root impingement. Dr. Ciechorska further states that the Plaintiff's right knee medial and lateral meniscal tears with additional ACL and PCL injuries as well as, the other injuries mentioned in her report, were sustained from trauma resulting from the subject accident. Dr. Ciechorska opines that within a reasonable degree of medical certainty Plaintiff has developed significant limitations of his neck, back, right shoulder and right knee along with significant limitations in the use of his cervical and lumbar spine.

Plaintiff submits the report of Regency Healthcare Medical, P.L.L.C., Dr. Robert Haar,

who performed a right shoulder arthroscopy, synovectomy, subacromial decompression, lysis of adhesions, bursectomy, partial labrum and rotator cuff debridement and biceps tenotomy on October 24, 2018. Dr. Haar states that the injuries sustained and the treatment rendered were the direct result of the May 17, 2018 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, Nouhan Camara's, 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 §§ 5102(d) and 5104(a) is **denied.**

Dated: August 31, 2020



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