Williams v Abbas
2021 NY Slip Op 30315(U)
February 1, 2021
Supreme Court, Kings County
Docket Number: 524359/2017
Judge: Richard Velasquez

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of FEBRUARY, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

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COSSEAM D. WILLIAMS,

Plaintiff,

-against-

BARBARA J. ABBAS and RASS NYANKANZI.

Defendants,

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Index No.: 524359/2017
Decision and Order

The following *papers NYSCEF* Doc #'s 12 to 61 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	12-17; 19-23; 43-51
Opposing Affidavits (Affirmations)	18; 25; 55-60
Reply Affidavits (Affirmations)	37-38; 61

After having heard Oral Argument on November 4, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff COSSEAM D. WILLIAMS moves pursuant to CPLR 3212 for summary judgment on liability. (MS#1). Defendants oppose the same contending there are issues of fact. Defendants BARBARA J. ABBAS and RASS NYANKANZI, move pursuant to CPLR 602 for an order consolidating actions no. 1 and no. 2 for joint trial and discovery. (MS#2). Plaintiff opposes the same. Defendants, BARBARA J. ABBAS and RASS NYANKANZI, move pursuant to CPLR 3212, for an Order granting Defendant summary

judgment and dismissing the Complaint of the Plaintiff, upon the ground that Plaintiff has failed to meet the "serious injury" threshold requirement mandated by Insurance Law §5102(d). (MS#4). Plaintiff opposes the same

This action arises from a motor vehicle accident which occurred on May 29, 2016 which allegedly cause injuries to the plaintiff.

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". *CPLR* §3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id*. The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact

and the right to judgment as a matter of law. (*Zuckerman v. City of New York*, 49 NY2nd 557 [1990].) Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v. Algaze*, 84 NY2d 1019 [1995]).

In the present case, plaintiff contends they were stopped at red light when they were struck by defendant in rear. Defendant, contends the plaintiff was not stopped at a red light but slammed on brakes as light was changing from green to yellow causing defendant to hit plaintiff. Plaintiff and defendant have conflicting stories regarding how the accident occurred. Clearly a he said he said situation. Moreover, all of these contentions raise questions of fact as to both parties' credibility. Credibility is solely for the jury (*Sorokin v. Food Fair Stores*, 51 AD2d 592, 593, 378 NYS2d 492, 493; *Pertofsky v. Drucks*, 16 AD2d 690, 227 NYS2d 508; *Ellis v. Hoelzel*, 57 AD2d 968, 968, 394 NYS2d 91, 93 (1977). As such, issues of fact and credibility of the parties remain and are best left for a jury. Plaintiffs motion for summary judgment is hereby denied. (MS#1).

Next the court will address defendants motion to consolidate. It is well-settled that consolidation of actions would be properly denied if the subject actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter. *Abrams, id; Rannert Diana & Co.. Inc. v. Kin Chevrolet, Inc.,* 137 AD2d 589, 524 NYS2d 481 (2d Dept. 1988); *Smith v. Smith*, 261 AD2d 928, 689 NYS2d 805 (4th Dept. 1999); *See also Steuerman v. Broughton*, 123 AD2d 681, 507 NYS2d 50 (2d Dept. 1986) (consolidation of two personal injury actions denied based on determination that consolidation would substantially prejudiced the plaintiff in

one of the action which has already been scheduled for arbitration); *Halpern v. Rodway*, 3 A.D.2d 941 (2d Dept.1957)(motion for consolidation of two actions is denied in view of the fact that trial in one of the actions was imminent, while considerable time had to elapse before the other action could be reached for trial). In the present case it is clear that this matter trial is imminent, as discovery is completed and the proposed consolidation matter is at the pleadings stage. Therefore, given the different procedural stages of these matters consolidation will result in substantial prejudice to the plaintiff in this action. Therefore, consolidation is denied. (MS#2).

Finally, the court shall address defendants motion pursuant to CPLR 3212 serious injury threshold. It is well settled, in a soft tissue injury case, a plaintiff alleging a "serious injury", must provide objective medical evidence of a "serious injury" within the meaning of the Insurance Law § 5102(d). A defendant seeking summary judgment on the grounds that plaintiff's injury does not meet the threshold, the defendant must show that there is no question of fact that there is no loss of range of motion.

In the present case, defendants establish prima facie that there is no "serious injury" as a matter of law because their evaluating doctors find normal ranges of motion. However, in opposition the plaintiff raises triable issues of fact as Dr. Baum finds loss in range of motion in plaintiff as well as differing ranges of motion from the other evaluating doctors. This is similar to the situation in *Knokhinov v. Murray*, 27 Misc.3d 1211(A), 2010 WL 1542529 (N.Y.Sup.), where the evaluating doctors found differing normative values. In *Knokhinov*, the court denied summary judgment because when the findings reported by one doctor are assessed by application of the standard of "normal" stated by the other doctors, the reports present "contradictory proof". *Id*. *See also*

Dettori v. Molzon, 306 AD2d 308, 309 [2d Dept 2003]. Therefore, material issues of fact exist precluding the grant of summary judgment including but not limited to conflicting doctors reports, the reports present "contradictory proof" regarding ranges of motion. *See, Knokhinov v. Murray*, 27 Misc3d 1211(A), 2010 WL 1542529 (N.Y.Sup.); *See also Dettori v. Molzon,* 306 AD2d 308, 309 [2d Dept 2003]. Therefore, the Court finds that there are triable issues of fact with regard to Plaintiff injuries.

Accordingly, plaintiff's motion pursuant to CPLR 3212 for summary judgment is hereby denied, for the reasons stated above. (MS#1). Defendant motion for consolidation is hereby denied, for the reasons stated above. (MS#2). Defendants, motion pursuant to CPLR 3212 on serious injury threshold is hereby denied, for the reasons stated above. (MS#4).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
February 1, 2021

ENTER FOTHWITH:

HON. RICHARD VELASQUEZ