

Roosa v Williams

2021 NY Slip Op 32914(U)

April 22, 2021

Supreme Court, Ulster County

Docket Number: Index No. EF2018-3628

Judge: Christopher E. Cahill

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**STATE OF NEW YORK
SUPREME COURT
COUNTY**

ULSTER

JAMES P. ROOSA,

Plaintiff,

-against-

**DECISION AND ORDER
INDEX NO. EF2018-3628**

**MELINDA D. WILLIAMS AND
RICHARD M. LANGER,**

Defendants.

Supreme Court, Ulster County
Motion Return Date: October 16, 2020

Present: Hon. Christopher E. Cahill, JSC

APPEARANCES: MAINETTI & MAINETTI, P.C.
Attorney for Plaintiff James P. Roosa
130 N. Front Street
Kingston, New York 12401
By: Alexander E. Mainetti, ESQ.

LAW OFFICES OF BRIAN D. RICHARDSON
Attorney for Defendant Melinda D. Williams
210 Washington Avenue Ext., Suite 104
Albany, New York 12203
By: Brian D. Richardson, Esq.

ONDROVIC, HURLEY & PLATEK, PLLC
Attorney for Defendant Richard M. Langer
777 Westchester Avenue, Suite 101
White Plains, New York 10604
By: Paul A. Hurley, Esq.

Cahill, J.:

This action was commenced by Plaintiff, James P. Roosa, to recover damages for alleged personal injuries sustained from a motor vehicle accident.

Defendant, Richard M. Langer, moves pursuant to CPLR § 3212 and Insurance Law § 5102(d) for summary judgment on the grounds that Plaintiff has not sustained a serious injury as required by statute for recovery of non-economic loss related to a motor vehicle accident.

Plaintiff has opposed the motion and contends that a question of fact exists as to whether he sustained a serious injury.

Defendant, Melinda D. Williams, has cross-moved for summary judgment on the same grounds as Defendant Langer, that Plaintiff has not sustained a serious injury as required by statute. Defendant Williams also moves for dismissal of all cross-claims filed against her as she argues that Defendant Langer was solely liable for the accident. Defendant Langer partially opposed the cross-motion related to the issue of liability as he argues there is a question of fact on this issue. Plaintiff's opposing submissions have addressed only the "serious injury" issue.

On August 10, 2017, at approximately 3:29 p.m. on U.S. State Highway 17B in the Village of Monticello, Sullivan County, New York, the motor vehicle accident involving the three parties to this action occurred. Plaintiff was operating a 2017 Dodge Ram truck traveling westbound on State Route 17B. Plaintiff was stopped behind the vehicle in front of him which was waiting to make a left turn. Defendant Williams was operating a 2003 Ford directly behind Plaintiff and Defendant Langer was operating a 2012 Toyota directly behind Defendant Williams. It is alleged that Defendant Langer failed to notice that Defendant Williams had stopped her vehicle and that, as a result, he struck the rear of her vehicle. Defendant Williams' vehicle then struck the rear of Plaintiff's vehicle. Defendant Langer was ticketed following the

accident for violations of Vehicle and Traffic Law § 1180(a)- speed not reasonable and prudent and Vehicle and Traffic Law § 1129(a)- following too closely.

Plaintiff alleges that as a result of the accident he sustained personal injuries and subsequently commenced this action.

In his bill of particulars, Plaintiff claims to have sustained the following injuries as a result of the accident: cervical strain; disc bulging at C3-4 and C4-5; numbness/tingling; radiating pain into the right arm; mid-back pain; cervical radiculopathy; lumbar radiculopathy; multiligamentous injury to the cervical, thoracic and lumbar spine; thoracolumbar sprain/strain; muscle spasm; cervical disc disorder; decreased range of motion; and neck pain.

Plaintiff alleges that his injuries qualify as serious injuries under the following categories of Insurance Law § 5102(d): permanent loss of use; permanent consequential limitation of use of his neck and/or shoulder; a significant limitation of use of his neck and/or shoulder; and a medically determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts which constituted his usual and customary daily activities for at least 90 out of the first 180 days following the accident.

"Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue" (McDay v State, 138 AD3d 1359 [3d Dept 2016]). In deciding whether summary judgment is warranted, the court's main function is issue identification, not issue determination (Barr v County of Albany, 50 NY2d 247 [1980]). The party seeking summary judgment has the burden of establishing its entitlement thereto as a matter of law (Winegard v New York Univ. Med. Ctr., 64 NY2d 851 [1985]). The evidence must be construed in a light most favorable to the party opposing the motion (Davis v Klein, 88 NY2d 1008 [1996]). In order to defeat a motion for summary judgment, the party opposing the

motion must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial of the action (Alvarez v Prospect Hospital, 68 NY2d 320 [1986]; Zuckerman v City of New York, 49 NY2d 557, [1980]). Failure to make such showing requires denial of the motion regardless of the sufficiency of the opposing papers (Voss v Netherlands Ins. Co., 22 NY3d 728 [2014]).

Insurance Law § 5102(d) defines “serious injury” as: “a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; 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 function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person’s usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.”

“Under New York's no-fault system of automobile insurance, a person injured in a motor vehicle accident may only recover damages if he or she sustained a serious injury” (Sul-Lowe v Hunter, 148 AD3d 1326, 1327, [3d Dept 2017] [internal quotation marks, ellipsis and citations omitted] *see* Fillette v Lundberg, 150 AD3d 1574, 1576 [3d Dept 2017]). ‘As relevant here, Insurance Law § 5102 (d) defines “serious injury” as a bodily injury resulting in . . . significant limitation of use of a body function or system’ (Cross v Labombard, 127 AD3d 1355, 1355 [3d Dept 2015] [internal quotation marks and brackets omitted]). ‘As proponents of the motion for summary judgment, defendants bore the initial burden of establishing, through competent medical evidence, that plaintiff did not sustain a serious injury caused by the accident’ (Lavrinovich v Conrad, 180 AD3d 1265, 1267 [3d Dept 2020] [internal quotation marks and citations omitted]; *see* Ni v O'Brien, 179 AD3d 1190, 1191 [3d Dept 2020]). The defendants

may meet this burden by establishing that plaintiff had a “documented history of extensive preexisting conditions and injuries that have produced the same types of symptoms that plaintiff now attributes to the subject accident” (Vanalstyne v Gordon, 180 AD3d 1140, 1142 [3d Dept 2020] [internal quotation marks and citation omitted]). If this burden is met, the burden then shifts to plaintiff to raise a triable issue of fact by producing “objective medical evidence distinguishing her preexisting conditions from the injuries claimed to have been caused by the accident” (*Id.* [internal quotation marks, brackets and citations omitted]; see St. Clair v Giroux, 132 AD3d 1199, 1200 [3d Dept 2015])” (Altman v Shaw, 184 AD3d 995, 996-997 [3d Dept 2020]).

As both Defendants Langer and Williams have moved for summary judgment dismissing the complaint on the grounds that Plaintiff did not sustain a serious injury as defined by Insurance Law § 5102(d), and as both rely on the same evidence, the court will consider both motions collectively.

Defendants argue that Plaintiff has not sustained a serious injury as defined by Insurance Law § 5102(d). Defendants assert that Plaintiff’s medical records fail to establish a serious injury or demonstrate that Plaintiff’s alleged injuries are casually related to the accident.

In support of their motion, Defendants provide the Independent Medical Evaluation of Dr. Bradley D. Weiner, an orthopedic surgeon, which was performed on March 24, 2020. Dr. Weiner indicates that he had reviewed the Plaintiff’s Bill of Particulars, photographs of Plaintiff’s vehicle on the date of the accident, Plaintiff’s deposition transcript, and a list of Plaintiff’s medical records. Dr. Weiner opined that the objective medical evidence fails to identify a serious or significant injury sustained to the cervical, thoracic, or lumbar spine or right shoulder because of the accident. Dr. Weiner states that he conducted a physical examination of Plaintiff which included range of motion testing that was performed by visual measurement and

inclinometer. Following that examination, Dr. Weiner determined that Plaintiff had full and normal range of motion of the cervical and lumbar spine, and the right shoulder. Dr. Weiner diagnosed Plaintiff with a cervical strain (now resolved), superimposed over pre-existing mild disc bulging at C3-4 and C4-5. He found that a thoracolumbar strain was now also resolved and that Plaintiff had a right periscapular myofascial irritation. Dr. Weiner noted that the Plaintiff had not lost any time from work and continues to work in a full-duty capacity as a police officer. Dr. Weiner further opined that Plaintiff demonstrates no disfunctions or disability and there is no evidence of a sustained permanent limitation in function or use of a body system, part or organ based on the accident. Dr. Weiner also noted that Plaintiff's subjective complaints of pain are consistent with myofascial irritation in the upper right shoulder, and that Plaintiff has a history of prior symptoms that are similar to a prior injury he had in 2015. Dr. Weiner notes finally that Plaintiff's occupation as a police officer and the related work activities may cause transient irritation of the same symptoms.

Defendants conclude that Plaintiff does not have a permanent loss of use of a bodily organ, member, function or system as there is no indication in the medical records that Plaintiff has a total loss of use of his cervical, thoracic and/or lumbar spine, and that Plaintiff's allegations of pain, tenderness, and loss of range of motion are not enough to support such a claim. The court agrees.

Defendants next argue that Plaintiff's injuries do not qualify as permanent consequential limitations of use or significant limitations of use. The alleged injuries must be a result of the subject incident, but Defendants assert that Plaintiff's alleged injuries were pre-existing. Defendants further argue that even if a determination could be made that the injuries resulted from the subject accident, they do not rise to the level of a serious injury.

Defendants rely on Dr. Weiner's opinion that the objective medical evidence failed to identify a serious or significant injury sustained to the cervical, thoracic, or lumbar spine because of the subject accident. Defendants assert that Dr. Weiner found completely normal findings as Plaintiff had full range of motion in all areas and that Plaintiff's subjective complaints of pain are insufficient to establish a serious injury. Defendants argue again that the record establishes that Plaintiff did not lose any time from work as a police officer and he continues to work at full capacity. Defendants assert that Plaintiff indicated at his deposition that he did not have a serious injury as he was able to do everything and was only limited at the gym.

Defendants additionally argue that the treatment and findings by Dr. Dassa, a board-certified orthopedic surgeon, which Plaintiff has submitted in opposition, are entirely speculative as to causation because they were performed eight months post-accident and do not account for Plaintiff's prior normal findings or mention them. Defendants assert that Dr. Dassa's examination was not contemporaneous with the subject accident and as such is insufficient to raise an issue of fact. Defendants argue that the gap in time between the subject accident and Dr. Dassa's examination coupled with normal findings two months post accident are fatal to prove serious injury.

Defendants further assert that Plaintiff's alleged cervical and lumbar injuries are insufficient to establish a serious injury. Defendants argue that Plaintiff's subjective complaints of pain have no objective medical basis as all his diagnostic imaging was unremarkable and did not show any acute injury related to the accident. Defendants further argue that the mere existence of a bulging disc is not evidence of serious injury within the meaning of the no-fault law. Defendants cite Dr. Weiner's report which stated that the cervical imaging performed after the accident showed degenerative changes establishing that this was a pre-existing condition.

Defendants further argue that Plaintiff has consistently had full range of motion in the neck, so the disc bulge resulted in zero physical limitations.

Defendants additionally assert that Plaintiff has not sustained a medically determined injury or impairment under the 90/180-day category. Defendants argue that Plaintiff's own Bill of Particulars indicates that he was never confined to a hospital, his bed, or his home because of the accident. Defendants further assert that there is no objective medical evidence to establish that the accident caused injuries that prevented Plaintiff from performing substantially all of his usual and customary daily activities following the accident. Defendants argue there is no evidence that the Plaintiff sustained anything more than a minor interference with his activities after the accident, as Plaintiff continued to work full time and did not miss any work following the accident. The court agrees.

Based upon the evidence provided, the court finds that the Defendants have met their prima facie burden of demonstrating that Plaintiff did not sustain a serious injury as a result of the accident. The burden is now shifted to Plaintiff to raise a triable issue of fact.

In opposition, Plaintiff argues that Defendants' motions should be denied because he has sustained a serious injury under Insurance Law § 5102(d) under the categories of: a significant limitation of use of a body function or system and permanent consequential limitation of use of a body organ or member.

“When a plaintiff relies upon the permanent consequential limitation and/or significant limitation of use categories, such claims must be grounded upon objective, quantitative evidence with respect to diminished range of motion or a qualitative assessment comparing [the] plaintiff's present limitations to the normal function, purpose and use of the affected body organ, member, function or system. Additionally, a plaintiff must demonstrate that the limitation of use that he or she sustained was more than mild, minor or slight’ (Jones v Marshall, 147 AD3d 1279, 1280

[3d Dept 2017)] [internal quotation marks and citations omitted]; see Kesick v Burn-Leader, 169 AD3d 1313, 1317 [3d Dept 2019]). Furthermore, as far as the significant limitation of use category is concerned, permanency of limitation is not required (see Gates v Longden, 120 AD3d 980, 981, [4th Dept 2014]; Estrella v GEICO Ins. Co., 102 AD3d 730, 731 [2d Dept 2013]). ‘In order to prove the extent or degree of physical limitation, an expert's designation of a numeric percentage of a plaintiff's loss of range of motion can be used to substantiate a claim of serious injury. An expert’s qualitative assessment of a plaintiff's condition also may suffice, provided that the evaluation has an objective basis and compares the plaintiff's limitations to the normal function, purpose and use of the affected body organ, member, function or system’ (Toure v Avis Rent A Car Sys., 98 NY2d 345, 350 [2002] [citations omitted]; see Perl v Meher, 18 NY3d 208, 217 [2011])” (Burns v Childress, 189 AD3d 1939, 1940 [3d Dept. 2020]).

“[A] bulging disc under certain circumstances can qualify as a serious injury if it results in a quantifiable loss in an individual’s range of motion” (Mahar v Bartnick, 91 AD3d 1163, 1165 [3d Dept. 2021]).

The record shows that Dr. Dassa is familiar with plaintiff’s medical history as his narrative report reflects that he obtained a medical history from him regarding his treatment. Plaintiff argues that Dr. Dassa’s report indicates that he attributes Plaintiff’s surgical cervical spine disc bulges and his consequential loss of range of motion of his cervical spine and limitations directly to the motor vehicle accident. Plaintiff states that Dr. Dassa indicates that from his initial consultation with Plaintiff on April 10, 2018 through his most recent treatment on July 7, 2020, he has always found significant loss of range of motion of Plaintiff’s cervical spine and lumbar spine relative to his cervical disc bulge which are causally related to the motor vehicle accident, and that Dr. Dassa’s findings are supported by the positive MRI scan that Plaintiff had on September 25, 2017.

Plaintiff further states that the July 7, 2020 report of Dr. Dassa found him to have a significant loss of range of motion of the cervical spine as follows: forward flexion measured 50 degrees out of a normal 60 degrees, extension measured 40 degrees when normal is 75 degrees, lateral bending measured 40 degrees right and left, normal is 45 degrees, lateral rotation measured 35 degrees right and left, normal is 80 degrees, which is more than 50% reduction in range of motion all directly being caused by his disc bulges at C3-C4 and C4-C5 which were caused by the motor vehicle collision.

He also states that Dr. Dassa also found him to have a loss of range of motion involving his thoracolumbar spine. The forward flexion measured 45 degrees out of a normal 90 degrees, extension measured 35 degrees out of a normal 30 degrees, lateral bending measured 20 degrees right and left, normal is 40 degrees, lateral rotation measured 20 degrees right and left, normal is 30 degrees. Plaintiff further states that Dr. Dassa found a positive Spurling test on the right and a positive SLR on the right side as well as spasms from T8 through L5-S1. Plaintiff indicates that in all measurements that Dr. Dassa performed, he used a handheld goniometer.

Plaintiff additionally states that he was first treated by Dr. Keri Bunbury a Doctor of Chiropractic, at KB Chiropractic Center, on April 26, 2018 following the motor vehicle collision. Plaintiff asserts that Dr. Bunbury performed range of motion testing on his cervical spine and some measurements demonstrated an approximately 50% loss of range of motion. Plaintiff states that Dr. Bunbury indicates in her medical records that Plaintiff's pain, symptomology, and limitations in the cervical, thoracic, and lumbar spine are causally related to the motor vehicle accident.

Plaintiff then states that he was also treated by Dr. Sukdeb Datta, a pain management specialist at the recommendation of Dr. Dassa. Plaintiff visited Dr. Datta's office on May 14, 2018 complaining of cervical spine pain radiating into his right arm and lumbar spine pain

radiating to the bilateral lower extremities with numbness and tingling. Plaintiff states that at the visit, he stated that the pain, injuries, symptomology, and limitations were interfering with his ability to perform his duties as a police officer. According to the plaintiff, Dr. Datta performed range of motion testing on his cervical spine which revealed a significant loss of range of motion, and that plaintiff states that Dr. Datta's range of motion testing on his lumbar spine also revealed a significant loss of range of motion. Plaintiff states that this information is contained in the reports of Dr. Datta who diagnosed him with ligamentous injuries to his lumbar, thoracic, and cervical spine and diagnosed him with cervical radiculopathy and lumbar radiculopathy, all causally related to the motor vehicle accident.

Plaintiff argues that by providing the medical reports and records of Dr. Datta, Dr. Datta and Dr. Bumbury, and the positive MRI, he has established a triable issue of fact through objective medical evidence. Plaintiff asserts that the evidence establishes that he sustained a serious injury under the permanent consequential limitation and/or significant limitation of use categories of Insurance Law § 5102(d). Plaintiff states that a review of the records and reports indicate that his injuries, complaints, and symptomology are not a continuation of a prior condition but are a direct result of the accident.

In reply, Defendant Langer asserts that Plaintiff's opposition to the motion failed to address the serious injury categories of permanent loss of use and a medically determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts which constituted his usual and customary daily activities for at least 90 days out of the first 180 days following the accident. Defendant Langer argues that since Plaintiff failed to set forth any objective medical evidence in admissible form establishing an injury or issue of fact under either of these categories, he has abandoned these claims.

Defendant Langer further argues that the cervical MRI dated September 25, 2017, only notes that at C3-4 and C4-5 that there is mild disc marginal bulging. Defendant Langer asserts that the only ranges of motion quantified were eight months post-accident which is not contemporaneous and did not recognize the normal findings that had been made by Plaintiff's physicians.

In light of the conflicting expert medical opinions and viewing the evidence in a light most favorable to the Plaintiff, the court finds that Plaintiff has provided competent medical evidence sufficient to raise a triable issue of fact regarding whether he has sustained serious injury under only the "significant limitation" and "permanent consequential limitation of use" categories of Insurance Law § 5102(d).

Accordingly, the Defendants' motions for summary judgment are denied with the exception of Plaintiff's "permanent loss of use" and "90-180" claims which must be dismissed.

As to liability, Defendant Williams has cross-moved for dismissal of all cross-claims filed against her as she argues that Defendant Langer was solely liable for the accident. Defendant Langer has partially opposed the cross-motion on the issue of liability as he argues there is a question of fact on this issue.

"[A] rear-end collision establishes a prima facie case of negligence, imposing a duty upon the operator of the trailing vehicle to provide a nonnegligent explanation for the collision (*see National Interstate v A.J. Murphy Co. Inc.*, 9 AD3d 614, 715 [3d Dept 2004]). A 'sudden and abrupt stop of the vehicle in front can constitute a sufficient explanation to overcome the inference of negligence' (*Warner v Kain*, 162 AD3d 1384, 1384 [3d Dept 2018])[internal quotation marks and citation omitted]" (*Gitman v Martinez*, 169 AD3d 1283, 1285 [3d Dept 2019]).

In his deposition testimony, Plaintiff states that there was moderate traffic when the vehicle in front of his stopped to make a left-hand turn. Plaintiff stated that he stopped his vehicle as there was traffic coming in the other direction so that car had to wait to turn. Plaintiff stated that as the car in front of him crossed over into the oncoming lane to make the turn, he was getting ready to take his foot off the brake to proceed forward when he got hit from behind. Plaintiff stated that his vehicle was stopped at the time of the accident and that he felt one impact.

Defendant Williams stated in her deposition testimony that she was in “stop and go” traffic which had stopped several times leading up to the accident. She further stated that her car was stopped, and her foot was on the brake when she felt the impact from behind and her car was pushed into the back of Plaintiff’s truck. She further indicated that she had come to a complete stop prior to the accident and that she could see the back of the Plaintiff’s bumper. She also stated that it was a gradual stop and that “I wasn’t on top of the guy in front of me. I was paying attention.

Defendant Langer stated in his deposition testimony that the traffic was light to moderate at the time of the accident, and that as he was driving, he was approaching a hill, where his lane of travel divided to two lanes. He stated that he was in the passing lane passing vehicles in the ascent lane, and that as he was approaching Defendant Williams’ vehicle, the two lanes started to close into one and he moved over to the lane directly behind her vehicle. Langer testified that as he approached the Williams vehicle, he was driving 15 to 20 miles per hour. He further testified that Defendant Williams was on the hill keeping pace with her accelerator so as he approached her vehicle there were no brake lights on her vehicle.

Langer said he accelerated a little bit but then realized that Defendant Williams was not moving and that he was hitting a wall of traffic. It was too late, he stated, and he bumped her. Langer stated that he had just put his foot on the accelerator when he bumped Defendant Williams' vehicle and that he was going no greater than three or four miles an hour. He also testified that after he bumped Defendant Williams' vehicle there was a 10 second delay and then suddenly Defendant Williams accelerated forward and then stopped again, but he did not find out until later that she had hit the Plaintiff. He also testified that at the time he bumped Defendant Williams' vehicle his foot was on the brake, and that after the accident he saw Defendant Williams' brake lights illuminated when they all pulled off to the side of the road, so the brake lights were functional. He testified that he believed she had her foot on the accelerator to maintain position on the hill and that was why her brake lights were not on. Defendant Langer further asserted that Defendant Williams hit the Plaintiff because she was tailgating him.

The court finds that the rear-end collision between Defendants Williams and Langer established a prima facie case of negligence against Defendant Langer. The duty is then passed to Defendant Langer, to provide a nonnegligent explanation for the collision.

When viewed in the light most favorable to the nonmovant, the court finds that Defendant Langer has established the existence of a triable issue of fact and provided a nonnegligent explanation for the collision. The deposition testimony provided by the Defendants clearly establishes a question of fact as to what occurred at the time of the accident as there are conflicting accounts from each Defendant. Defendant Langer testified that there was a sudden and abrupt stop by Defendant Williams' vehicle and that her brake lights were not illuminated. Defendant Langer further testified that after he struck her vehicle there was a pause and then Defendant Williams' vehicle accelerated forward, and she struck the Plaintiff's vehicle. These assertions establish the existence of a non-negligent explanation for the collision, the merit of

which is for the jury to determine. Therefore, Defendant Williams’ motion to dismiss the cross-claims is denied.

Accordingly, based on the foregoing, it is hereby

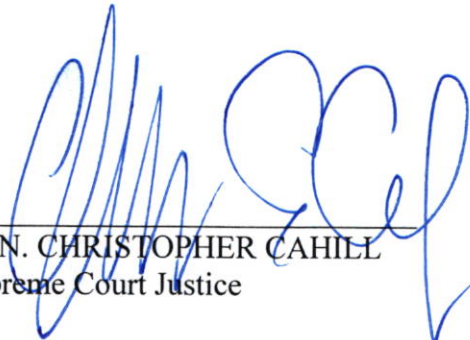
ORDERED, that Defendant Langer’s motion for summary judgment is **denied** except with regard to plaintiff’s claims for “permanent loss of use” and “90-180” for which summary judgment of dismissal is granted ; and it is further

ORDERED, that Defendant Williams’ cross-motion for summary judgment and dismissal of the cross-claims against her is **denied** in its entirety except with regard to plaintiff’s claims for “permanent loss of use” and “90-180” for which summary judgment of dismissal is granted.

This constitutes the Decision and Order of the court, the original of which is being uploaded to NYSCEF for electronic entry and filing by the Ulster County Clerk. Upon such entry, counsel for the plaintiff shall promptly serve notice of entry on all other parties entitled to such notice and is not relieved from the applicable provisions of CPLR 2220 and 202.5b(h)(2) of the Uniform Rules of Supreme and County Courts insofar as they relate to service and notice of entry of the filed document upon all other parties to the proceeding, whether accomplished by mailing or electronic means.

**SO ORDERED AND ADJUDGED.
ENTER.**

Dated: April 22, 2021
Kingston, New York



HON. CHRISTOPHER CAHILL
Supreme Court Justice

Papers Considered:

1. Notice of Motion for Summary Judgment dated June 30, 2020; Attorney Affirmation of Paul A. Hurley, Esq., dated June 30, 2020 and annexed Exhibits A-I;
2. Affirmation in Opposition of Alexander E. Mainetti, Esq., dated September 9, 2020 and annexed Exhibits A-E;
3. Notice of Cross-Motion dated October 9, 2020; Affirmation in Support of Cross-Motion for Summary Judgment of Brian D. Richardson, Esq., dated October 9, 2020 and annexed Exhibits A-I;
4. Reply Affirmation of Paul A. Hurley, Esq., dated October 14, 2020;
5. Affirmation in Partial Opposition of Paul A. Hurley, Esq., dated October 14, 2020;
6. Reply Affirmation in Support of Defendant Williams' Cross-Motion for Summary Judgment of Brian D. Richardson, Esq., dated October 15, 2020.