Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

ABDUL K. RAUFI,

Plaintiff(s),

-against-

TIANTIAN TANG,

Defendant(s).

IAS Part - 42

Index No.: 700320/2019

Motion Date: 11/18/21

Motion Cal. No. 49

Motion Seq. No. 3

The following electronically filed ("EF") documents read on this motion by Tiantian Tang ("Mr. Tang" or "defendant") for an Order granting defendant summary judgment pursuant to CPLR § 3212, dismissing the complaint against him on the basis that Abdul K. Raufi ("Mr. Raufi" or "plaintiff") did not sustain a "serious injury" under Insurance Law § 5102(d), and for such other and further relief as this Court deems necessary and proper.

	Papers Numbered
Notice of Motion-Affirmation- Exhibits.....	EF 38 - 46

Upon the foregoing papers, it is ordered that the motion is determined as follows:

This is an action to recover damages for personal injuries, which Mr. Raufi allegedly sustained in a motor vehicle collision. The plaintiff alleges that on November 20, 2018, the motor vehicle owned and operated by Mr. Tang came into contact with the motor vehicle operated by plaintiff on Northern Boulevard at or near its intersection with Linden Place, in the County of Queens, State of New York ("subject accident"). As a result, the plaintiff alleges that he sustained serious injuries to his cervical spine, left shoulder, lumbar spine and left ankle. As a result, on January 7, 2019, the plaintiff commenced the instant action against the defendant. On February 26, 2019, issue was joined, wherein Mr. Tang interposed an answer. Thereafter, on

March 3, 2021, Mr. Tang filed the instant a motion for summary judgment, pursuant to CPLR § 3212, seeking to dismiss the instant action.

Now the defendant seeks summary judgment on the ground that Mr. Raufi did not sustain a "serious injury" as defined by § 5102(d) of the New York's Insurance Law as a result of the subject accident. It has long been established that the "legislative intent underlying the Comprehensive Motor Vehicle Insurance Reparation Act of 1974 (i.e., Insurance Law § 5101, *et seq.* – commonly known as New York's "No-Fault" Insurance Law) was to weed out frivolous claims and limit recovery to significant injuries (*Licari v. Elliot*, 57 NY2d 230 [1982]; *see also Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002] quoting *Duel v. Green*, 84 NY2d 795 [1995]). New York's No-Fault Insurance Law § 5102 (d) defines "serious injury" as follows:

> … 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.

The Court of Appeals has held that the issue of whether a claimed injury falls within the statutory definition of a "serious injury" is a question of law for the courts in the first instance, which may properly be decided on a motion for summary judgment (*see Licari v. Elliott*, 57 NY2d 230 [1982]; *see also Charley v. Goss*, 54 AD3d 569 [1st Dept 2008] *aff'd* 12 NY3d 750 [2009]; *Nolan v. Ford*, 100 AD2d 579 [2d Dept 1984], *aff'd* 64 NYS2d 681 [1984]).

On a motion for summary judgment, the defendant has the initial burden of making a *prima facie* showing, through the submission of evidence in admissible form, that the injured plaintiff did not sustain a "serious injury" within the meaning of Insurance Law § 5102(d) (*see Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v. Eyler*, 79 NY2d 955 [1992]; *Akhtar v. Santos*, 57 AD3d 593 [2d Dept 2008]). The defendant may satisfy this burden by submitting the plaintiff's deposition testimony and the affirmed medical report of the defendant's own examining physician (*Moore v. Edison*, 25 AD3d 672 [2d Dept 2006]; *Farozes v. Kamran*, 22 AD3d 458 [2d Dept 2005]). When a defendant seeking summary judgment based on the lack of serious injury relies on the findings of the defendant's own witnesses, "those findings must be in admissible form, such as, affidavits and affirmations, and not unsworn reports" to demonstrate entitlement to judgment as a matter of law (*Pagano v. Kingsbury*, 182 AD2d 268, 270 [2d Dept

1992]). A defendant may also establish entitlement to summary judgment by using medical reports and records prepared by the plaintiff's own physicians (*see Fragale v. Geiger*, 288 AD2d 431 [2d Dept 2001]; *Grossman v. Wright*, 268 AD2d 79 [2d Dept 2000]; *Vignola v. Varrichio*, 243 AD2d 464 [2d Dept 1997]; *Torres v. Micheletti*, 208 AD2d 519 [2d Dept 1994]). The failure to make such a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Xin Fang Xin v. Saft,* 177 AD3d 823 [2d Dept 2019]; *Rosenblum v. Schloss*, 175 AD3d 1339 [2d Dept 2019]; *Burns v. Stranger*, 31 AD3d 360 [2d Dept 2006]; *Rich-Wing v. Baboolal*, 18 AD3d 726 [2d Dept 2005]). Once defendant has met this burden, plaintiff must then submit objective and admissible proof of the nature and degree of the alleged injury in order to meet the threshold of the statutory standard for "serious injury" under New York's No-Fault Insurance Law (*see Duel v. Green*, 84 NY2d 795 [1995]; *Pagano v. Kingsbury*,182 AD2d 268 [2d Dept 1992]). The mere parroting of language tailored to meet statutory requirements is insufficient (*see Grossman v. Wright*, 268 AD2d at 84). Further, a plaintiff's subjective claim of pain and limitation of motion must be sustained by verified objective medical findings, which shall be based on a recent examination of the plaintiff (*Kauderer v. Penta*, 261 AD2d 365 [2d Dept 1999]; *Tobiolo v. Friedman*, 283 AD2d 483 [2d Dept 2001]). Lastly, the 90/180 category requires a demonstration that plaintiff has been unable to perform substantially all of his or her usual and customary daily activities for not less than 90 days during the 180 days immediately following the injury (*see Licari*, 57 NY2d at 236; *Romero v. Brathwaite*, 154 AD3d 894 [2d Dept 2017]). The words "substantially all" mean that the person has been "curtailed from performing his usual activities to a great extent rather than some slight curtailment" (*Licari*, 57 NY2d at 236).

In support of the instant motion, the defendant provides the affirmation of Dana Mannor, M.D. ("Dr. Mannor"), who is a Board-Certified Orthopedic Surgeon. On September 23, 2020, Dr. Mannor performed an independent medical examination of the plaintiff: She performed objective testing including range of motion testing measured with a goniometer in accordance with AMA Guidelines. Upon physical examination, Dr. Mannor found that plaintiff exhibited full range of motion in his cervical and lumbar spines along with the left and right shoulders and left and right ankles/feet. All other objective tests were negative. After examining plaintiff and reviewing pertinent medical records, Dr. Mannor concluded that plaintiff's sprains, strains, and contusions were all resolved. The plaintiff did not submit opposition papers to the instant motion.

Here the court finds that the defendant met his *prima facie* burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident. (*see Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v. Eyler*, 79 NY2d 955 [1992]; *Akhtar v. Santos*, 57 AD3d 593 [2d Dept 2008]). The defendant submitted competent medical evidence establishing, *prima facie*, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine, to the plaintiff's left shoulder, and to the plaintiff's left ankle did not constitute serious injuries under either the permanent loss of use of a body organ, member, function or system, or the permanent consequential limitation of use, the significant limitation of use categories of Insurance Law § 5102(d) (*see Jackson v. Aghwana*, 114 AD3d 728 [2d Dept 2014]; *see also Staff v. Yshua*, 59 AD3d 614 [2d Dept 2009]). The defendant also submitted evidence establishing, *prima facie*, that the plaintiff did not sustain a serious injury under the 90/180–day category of Insurance Law § 5102(d) (*see* period (*see Frias v. Gonzalez-Vargas*, 147 AD3d 500, 502 [1st Dept 2017]; *Cartha v. Quinn*, 50 AD3d 530 [1st Dept 2008] *lv denied* 11 NY3d 704 [2008]; *see also Perl v. Meher*, 18 NY3d 208, 220 [2011]; *Licari v. Elliott*, 57 NY2d 230, 236 [1982]; *see generally, Karpinos v. Cora*, 89 AD3d 994, 995 [2d Dept 2011]). Furthermore, the plaintiff failed to raise a triable issue of fact in opposition.

Accordingly, it is hereby

ORDERED that the defendant's motion for summary judgment, pursuant to CPLR § 3212, is granted; and it is further,

ORDERED that the complaint is dismissed with prejudice; and it is further,

ORDERED that defendant shall serve a copy of this decision and order with notice of entry, via certified mail and NYSCEF, upon the plaintiff and the clerk of this court on or before January 31, 2022.

The foregoing constitutes the decision and order of the court.

Dated: December 27, 2021
Long Island City, NY

FILED
1/5/2022
COUNTY CLERK
QUEENS COUNTY

Maurice E. Muir

MAURICE E. MUIR, J.S.C.