

Jeongwoo Hong v Anjum

2021 NY Slip Op 34155(U)

July 30, 2021

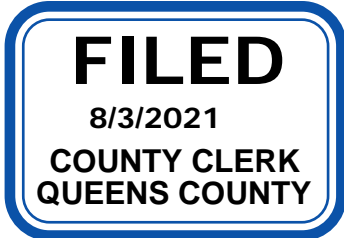
Supreme Court, Queens County

Docket Number: Index No. 704307/2018

Judge: Lance Evans

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE LANCE EVANS**
Justice

IAS PART 32

JEONGWOO HONG AND SOOJUNG
HWANGBO,

Index No. 704307/2018

Motion Date: May 13, 2021

Plaintiffs,

Motion Cal. No.: 7

-against-

Motion Sequence No.: 5

UMAIR M. ANJUM AND PRIMER
CONSTRUCTION, INC.,

Defendants.

The following e-filed papers numbered EF 54-68; 89-103; 106-107 submitted and considered on this motion by defendants Umair M. Anjum and Primer Construction, Inc., seeking an Order pursuant to CPLR 3212 granting summary judgment against plaintiff Jeongwoo Hong on the grounds that he has not sustained a serious injury under Insurance Law sections 5102 (d).

Papers
Numbered

Notice of Motion -Affidavits-Exhibits.....	EF 54-68
Affirmation in Opposition-Affidavits-Exhibits.....	EF 89-103
Reply Affirmation-Affidavits-Exhibits.....	EF 106-107

At the outset, the Court notes that this matter was reassigned to this part following the retirement of the Honorable Rudolph E. Greco, Jr., which was effective on January 1, 2021.

Plaintiff, Jeongwoo Hong (hereinafter “Hong”) alleged that he sustained injuries on November 11, 2017, when the vehicle owned by Primer Construction, Inc., and operated by defendant Umair M. Anjum (hereinafter “Anjum”) came into contact with his vehicle on 41st Street approximately 300 feet north of Broadway, County of Queens, State of New York. Now, defendants move for summary judgment pursuant to CPLR 3212 on the basis that Hong has not sustained a

serious injury under the New York State Insurance Law.

Hong alleged in his first verified bill of particulars that as a result of the accident, he sustained injuries to his bilateral shoulder, cervical spine and lumbar spine. Hong alleged in his second verified bill of particular that he had two operations: one on January 30, 2018 to his bilateral L4 L5 facet nerve block and the other on February 2, 2018 to his right shoulder. He claimed that he sustained a serious injury under the permanent loss of use of a body organ, member, function or system; a significant limitation of use of a body function or system; a permanent consequential limitation of use of a body function or system and the 90/180 day categories of the Insurance Law.

It is well settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

The defendants' motion papers must demonstrate, through admissible medical evidence, which may include medical reports and records and affidavits and/or affirmed reports of medical examinations, including range-of-motion testing, that address all of the plaintiff's claims, that the plaintiff did not sustain functional limitations which would constitute either a permanent consequential limitation of use of a body organ, member, a significant limitation of use of body function or system, or a medically determined injury or impairment of a non-permanent nature that prevented the plaintiff from performing substantially all of the material, acts which constituted his or her usual customary daily activities for not less than 90 days during the 180 days immediately following the subject accident. *Toure v Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v Eycler*, 79 NY2d 955 [1992]; *Choi v Guerrero*, 82 AD3d 1080 [2d Dept. 2011]; *Jilani v Palmer*, 83 AD3d 786 [2d Dept. 2011]).

**Defendants' submissions demonstrating its entitlement to judgment as a matter of law
under CPLR 3212**

In support of the motion, in addition to the pleadings and plaintiff's deposition testimony, defendants submitted the reports of Dr. Edward A. Toriello, dated June 16, 2020; Dr. Daniel J. Feuer, MD, dated June 2, 2020; and Dr. Jonathan Lerner, dated May 25, 2020.

On examination, Dr. Toriello, a board-certified orthopedic surgeon, found no range of motion issues in plaintiff's *cervical spine, bilateral shoulders, bilateral elbows, and right wrist and hand*. In Dr. Toriello's opinion, Hong did not sustain a significant or permanent injury and the accident that is not the proximate cause of the injuries diagnosed. Dr. Toriello also determined that there were resolved spinal strains and a resolved right shoulder contusion.

On examination, Dr. Feuer, a board-certified neurologist, determined that all ranges of motion were normal and Hong's neurological exam had normal results as well. On examination, Dr. Lerner, a board-certified radiologist, determined the following: (1) cervical spine had normal

alignment with bulging discs in C5-6 and C6-7; (2) lumbar spine had normal alignment with shallow bulging discs; and (3) right shoulder's injury did not casually relate to the accident.

Legal Analysis

The Court finds that defendants submissions failed to establish their prima facie entitlement to judgment as a matter of law, except as to plaintiff's claim of serious injury under the 90/180 day category under Insurance Law section 5102(d) (*see Gaddy v Eyler* 79 NY2d 955 [1992]); *Licari v Elliott*, 57 NY2d 230 [1982]). Dr. Toriello, Dr. Feuer, and Dr. Lerner found no range of motion deficits in plaintiff's back and right shoulder. However, plaintiff's expert reports evidence of limited ranges of motion. (*See Pero v Transervice Logistics, Inc.*, 83 AD3d 681 [2d Dept 2011]; *Washington v Asdotel Enters., Inc.*, 66 AD3d 880 [2d Dept 2009]; *Giacomaro v Wilson*, 58 AD3d 802 [2d Dept 2009]).

Moreover, in opposition, plaintiff's submissions raised triable issues of fact. Hong submitted the affirmations from his radiologists: Dr. Steven Losik, Dr. Mary Hu; affirmations from his orthopedists: Dr. Mark McMahon and Dr. Sanford Wert; and affirmations and medical reports from his physicians: Dr. Colin Clarke, Dr. David Gamburg and Dr. David Mun, demonstrating that plaintiff sustained serious injuries to the cervical and lumbar regions of his spine and his right shoulder (*see Perl v Meher*, 18 NY3d 208 [2011]; *Cash v Abraham*, 105 AD3d 690 [2d Dept 2013]). Although defendants' experts determined normal ranges of motion, Hong's experts determined the opposite such as limited ranges of motion and disabilities, which creates issues of fact (*See Moorer v Amboy Bus Co., Inc.*, 52 AD3d 587 [2d Dept 2008]). Additionally, plaintiff alleges that Dr. Torilleo's ranges of motion testing is speculative and that there are questions of fact concerning Dr. Lerner's findings regarding the MRI pathology being post-traumatic or degenerative. However, Hong did not raise a triable issue of fact to demonstrate that he sustained a serious injury under the 90/180 day category. (*Perez v Schreier*, 102 AD3d 938 [2d Dept 2013]; *see also Karpinos v Cora*, 89 AD3d 994 [2d Dept 2011]). In his deposition transcript, he testified that he only lost one month of work.

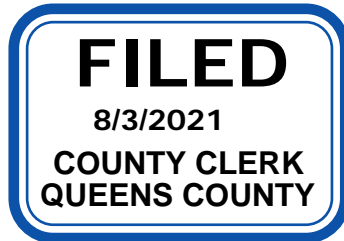
In reply, defendants allege that they established their prima facie case as plaintiff's experts' reports lack duration and causality. Defendants further allege that there are no recent examinations from plaintiff's experts. It is important to note that the Notice of Motion is dated July 1, 2020, the Affirmation in Opposition is dated March 10, 2021, and the Reply Affirmation is dated March 11, 2021. This Court also notes that on October 22, 2020 by Short Form Order, the Honorable Rudolph J. Greco, Jr., issued a stay for 120 days allowing Hong to obtain new counsel. Defendants' contention lacks merit as the Hong's experts conducted the reports while the stay was implemented.

Conclusion

Therefore, defendants' motion for summary judgment pursuant to CPLR 3212 is granted to the extent that plaintiff's claim of serious injury under the 90/180 day of the Insurance Law is dismissed.

This constitutes the decision and order of the Court.

Dated: July 30, 2021



A handwritten signature in black ink, appearing to read "Lance Evans".

Hon. Lance Evans, J.S.C.