

Almonte v Sanogo

2021 NY Slip Op 34260(U)

September 23, 2021

Supreme Court, Bronx County

Docket Number: Index No. 20617/2018E

Judge: Ben R. Barbato

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: IA-15

ARDIO COMPOS ALMONTE and ELADIO S. ADAMES FELIZ,

Index No.: 20617/2018E

Plaintiff(s)+,

-against-

Hon. Ben R. Barbato

MOHAMED SANOGO and CRESPIAN MELO,

Justice Supreme Court

Defendant(s).

The following papers numbered 22 to 50 were read on this motion (NYSCEF Seq. No. 001) for SUMMARY JUDGMENT THRESHOLD noticed on August 9, 2021.

Table with 2 columns: Document Type (Notice of Motion, Answering Affidavit, Replying Affidavit) and NYSCEF No(s).

Cross motion is decided in accordance with the attached decision

Motion is Respectfully Referred to Justice:
Dated:

Dated: 9/23/2021

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

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

**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX PART 15**

-----X
**ARIDIO COMPOS ALMONTE and ELADIO S. ADAMES
FELIZ,**

DECISION

Plaintiff,

Index No.: 20617/2018E

-against-

MOHAMED SANOGO and CRESPIAN MELO,

Defendants.
-----X

The instant action sounds in personal injury sustained from a motor vehicle accident occurring on August 22, 2017, on the Major Deegan Expressway at or near the intersection of Depot Place, in the County of Bronx, City and State of New York. The Defendant, Mohamed Sanogo, moves this court for an Order pursuant to CPLR § 3212 awarding partial Summary Judgment in favor of the Defendant dismissing the Plaintiff, Aridid Compos Almonte’s, Complaint claiming that Plaintiff cannot meet the serious injury threshold requirement mandated by Insurance Law § 5102(d). By Notice of Cross-motion, the Defendant, Crespin Melo, moves this court for an Order pursuant to CPLR § 3212 awarding partial Summary Judgment in favor of the Defendant dismissing the Plaintiff, Aridid Compos Almonte’s Complaint, claiming that the Plaintiff cannot meet the serious injury threshold requirement mandated by Insurance Law § 5102(d). The above stated Motion and Cross-motion are hereby consolidated and shall be decided as follows:

Defendants offer the report of Dr. Mark J. Decker, a Board-Certified Radiologist, who reviewed the MRI of Plaintiff’s lumbar and cervical spines taken on October 16, 2017 at Westchester Radiology. Dr. Decker’s report states that his review of the MRIs reveal long standing herniations and bulges of the Plaintiff’s cervical and lumbar spines which he opines are not related to the October 16, 2017 accident. Dr. Decker further states that the MRIs reveal no evidence of acute traumatic injury to Plaintiff’s cervical and lumbar spines.

Defendants also offer the report of Dr. John H. Buckner, a Board-Certified Orthopaedic Surgeon, who examined the Plaintiff on August 26, 2017 and found no objective evidence of cervical spine, lumbar spine, and right shoulder injury.

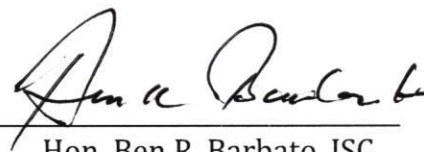
Plaintiff submits the Affirmation of Dr. Denny Rodriguez, Plaintiff's treating doctor who states that on August 23, 2017 he examined the Plaintiff and found limited range of motion of the cervical spine, lumbar spine, and right shoulder. Dr. Rodriguez' review of Plaintiff's MRIs revealed cervical herniations at C3/4, C4/5, C5/6, C6/7; lumbar spine herniations at L2/3, L3/4 and L4/5 with a disc bulge at L1/2; right shoulder full thickness tear of the distal subscapularis tendon. Dr. Rodriguez casually relates Plaintiff's injuries to the August 22, 2017 motor vehicle accident and opines that the Plaintiff has sustained a permanent partial disability limiting his ability to perform his usual and daily activities. Dr. Rodriguez also states that Plaintiff's injuries were not preexisting.

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 §1129(b); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *Singer v. Friedman*, 220 A.D.2d 574 (2nd Dept 1995). Mere conclusions, expressions of hope or unsubstantiated allegations are insufficient to raise a triable issue of fact. *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276 (1978) 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). Viewing the evidence in the light most favorable to the party opposing the motion for summary judgment, namely the Plaintiff, there exists triable issues 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). Accordingly

The Defendants' motion and cross-motion for an Order pursuant to CPLR § 3212 awarding Summary Judgment in favor of the Defendants dismissing Plaintiff's Complaint for failure to comply with the threshold requirement of Insurance Law § 5102(d) is **denied**.

Settle Order.

Dated: September 23, 2021



Hon. Ben R. Barbato, JSC