

Burgos v 123 Limo Corp.
2022 NY Slip Op 31850(U)
May 26, 2022
Supreme Court, Kings County
Docket Number: Index No. 520026/2019
Judge: Carl J. Landicino
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At an IAS Term, Part 81 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 26th day of May 2022.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X
ADELA BURGOS and IVAN P. AMANCHA,

Index No.: 520026/2019

Plaintiff,

-against-

DECISION AND ORDER

Motions Sequence #3

123 LIMO CORP and JOSE A. VALENTIN-ESCOBAR,

Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed..... 44-56,
Opposing Affidavits (Affirmations)..... 59-64,
Reply Affidavits (Affirmations).....

Upon the foregoing papers, and after oral argument, the Court finds as follows:

This action concerns a motor vehicle accident that purportedly occurred on October 30, 2018.

Plaintiffs, Adela Burgos and Ivan P. Amancha (hereinafter referred to collectively as the "Plaintiffs") were allegedly involved in a motor vehicle collision with a vehicle owned by Defendant 123 Limo Corp. and operated by Defendant Jose A. Valenti-Escobar (hereinafter the "Defendants"). The Plaintiffs allege that the collision occurred at or near the intersection of Myrtle Avenue and 79th Lane, in Queens, New York. Plaintiff Burgos claims, in her Verified Bill of Particulars, that she sustained a number of serious injuries including, *inter alia*, injuries to her right knee, left shoulder, right shoulder, cervical spine, lumbar spine, left ankle and left knee. Plaintiff Amancha claims, in his Verified Bill of Particulars (and subsequently in

his Supplemental Verified Bill of Particulars), that he sustained a number of serious injuries including, *inter alia*, injuries to his right knee, right shoulder, lumbar spine, cervical spine and thoracic spine.

The Defendants now move (motion sequence #3) for an order pursuant to CPLR 3212, granting summary judgment and dismissing the complaint as it relates to the claims of the Plaintiffs on the ground that none of the injuries allegedly sustained by either Plaintiff meet the “serious injury” threshold requirement of Insurance Law § 5102(d). In support of this application, the Defendants rely on the reports of Dr. Jeffrey Guttman relating to both Plaintiffs.

The Plaintiffs oppose the motion. The Plaintiffs contends that the Defendants have failed to meet their *prima facie* burden. The Plaintiffs contend that no radiological review was submitted in connection to the defendant's contention that each plaintiff has not met the serious injury threshold. The Plaintiffs also contend that the review by Dr. Guttman was conclusory and did not sufficiently opine on whether the injuries were caused by the motor vehicle collision. The Plaintiffs also contend that they have submitted sufficient proof to create a material issue of fact that should prevent the Court from granting summary judgment.

In support of his motion, the Defendant proffers the affirmed medical reports of Dr. Jeffrey Guttman. Dr. Guttman examined the Plaintiffs on November 27, 2020, more than two years after the date of the accident. Dr. Guttman conducted range of motion testing of Plaintiff Burgos' lumbar spine, cervical spine, right and left shoulder, right knee and left ankle and found limited range of motion. As to the right shoulder, Dr. Guttman found, “forward flexion of 165 degrees (normal 180 degrees), extension of 60 degrees (normal 60 degrees), abduction of 160 degrees (normal 180 degrees), external rotation of 85 degrees (normal 90 degrees), internal rotation of 60 degrees (normal 70 degrees), adduction is 30 (normal 30).” Plaintiff Burgos' right knee was examined but not thoroughly as Dr. Guttman found “[r]ange of

motion shows flexion of 130 degrees (140 degrees normal). Extension of 0 degrees (0 degrees normal).”

(See Report of Dr. Guttman for Plaintiff Burgos, NYSCEF Doc. 52).

Dr. Guttman conducted range of motion testing of Plaintiff Amancha’s cervical spine, thoracic spine, lumbosacral spine and right shoulder and found limited range of motion. As to the right shoulder Dr. Guttman found range of motion showing, “forward flexion of 170 degrees (normal 180 degrees), extension of 60 degrees (normal 60 degrees), abduction of 170 degrees (normal 180 degrees), external rotation of 80 degrees (normal 90 degrees), internal rotation of 60 degrees (normal 70 degrees), adduction is 30 (normal 30).” Dr. Guttman failed to examine Plaintiff Amancha’s right knee and address the subsequent surgery he referenced in his report. Dr. Guttman did not indicate that he utilized an objective test instrument on either Plaintiff in order to measure range of motion.

Turning to the merits of the motion for summary judgment, the Court is of the opinion that based upon the foregoing submissions, including expert medical testimony, the Defendants have not met their initial burden of proof regarding whether each Plaintiff suffered a serious injury as defined in Insurance Law 5102. Dr. Guttman conclusorily addressed causation as it related to both Plaintiffs. Dr. Guttman failed to examine Plaintiff Amancha’s alleged right knee tear and address the alleged subsequent surgery. Dr. Guttman also failed to examine Plaintiff Burgos’ alleged left knee horizontal oblique tear. What is more, Dr. Guttman did not adequately explain the limitations in range of motion reflected in his reports sufficient for the Defendants to meet their *prima facie* burden. See *Singleton v. F & R Royal, Inc.*, 166 AD3d 837, 838, 88 N.Y.S.3d 81, 82 [2d Dept 2018]; *Mercado v. Mendoza*, 133 AD3d 833, 834, 19 N.Y.S.3d 757, 758 [2d Dept 2015].

Since the Defendants failed to meet their *prima facie* burden, we need not consider the sufficiency of the Plaintiff’s opposition papers. See *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 476

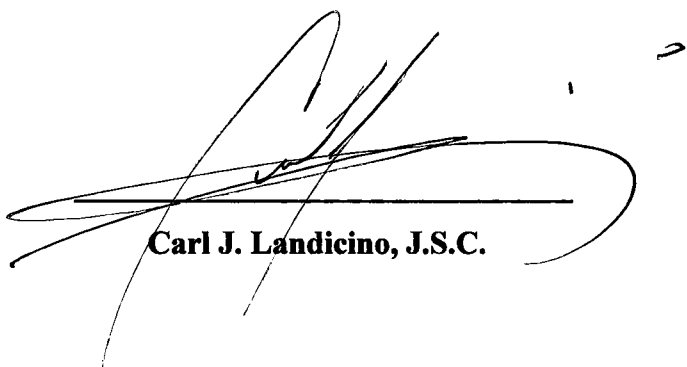
N.E.2d 642, 643 [1985]; *Ortiz v. Town of Islip*, 175 A.D.3d 699, 700, 107 N.Y.S.3d 394, 395 [2d Dept 2019].

Based on the foregoing, it is hereby ORDERED as follows:

The motion for summary judgment by the Defendants (motions sequence #3) as against the Plaintiffs is denied.

This constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
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