SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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RONALD SPADOLA,

Plaintiff,

-against-

"JOHN DOE", DEFENDANT'S REAL NAME BEING UNKNOWN, REAZ MOHSIN PRETOM,

Defendants.
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Index No.: 501922/2019
Motion Date: 12-6-21
Mot. Seq. No.: 1

DECISION/ORDER

Upon the following papers, listed on NYSCEF as document numbers 25-57, were read on this motion:

The defendant, REAZ MOHSIN PRETOM, moves for an order pursuant to CPLR 3212, granting him summary judgment dismissing plaintiff's complaint on the ground that the plaintiff did not sustain a "serious injury" as defined under Insurance Law 5102(d).

Defendant's submissions demonstrated, *prima facie*, 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 N.Y.2d 345, 746 N.Y.S.2d 865, 774 N.E.2d 1197; *Gaddy v. Eyler*, 79 N.Y.2d 955, 956-957, 582 N.Y.S.2d 990, 591 N.E.2d 1176). Defendant submitted competent medical evidence, including the reports of Dr. Fertiter, an orthopedist, and Dr. Springer, a radiologist, which demonstrated that the alleged injuries to the plaintiff's cervical and lumbar spine and right shoulder did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Hayes v. Vasilios*, 96 A.D.3d 1010, 1011, 947 N.Y.S.2d 550; *Staff v. Yshua*, 59 A.D.3d 614, 874 N.Y.S.2d 180; *Rodriguez v. Huerfano*, 46 A.D.3d 794, 795, 849 N.Y.S.2d 275), and were not caused by the subject accident but, instead, were either pre-existing and/or degenerative in nature (*see Kabir v. Vanderhost*, 105 A.D.3d 811, 962 N.Y.S.2d 703; *Il Chung Lim v. Chrabaszcz*, 95 A.D.3d 950, 944 N.Y.S.2d 236; *Faulkner v. Steinman*, 28 A.D.3d 604, 605, 813 N.Y.S.2d 529).

Defendant further established through the submission of plaintiff's deposition testimony that he was confined to home for only one week and never confined to bed that plaintiff did not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d) (*see Marin v. Ieni*, 108 A.D.3d 656, 969 N.Y.S.2d 165; *Bamundo v. Fiero*, 88 A.D.3d 831, 931 N.Y.S.2d 239; *Lewars v. Trans. Facility Mgt. Corp.*, 84 A.D.3d 1176, 1178, 923 N.Y.S.2d 701

In opposition, however, the plaintiff, at the very least, raised a triable issue of fact as to whether he sustained a serious injury under the permanent consequential and/or significant limitation of use categories of Insurance Law § 5102(d) to his lumbar spine. Plaintiff submitted admissible proof that on April 16, 2018, the same day of the accident, he was treated in the emergency room of Woodhull Medical Hospital and complained of pain in his lower back. Plaintiff maintains that he was told to seek further treatment if his condition worsened.

Plaintiff also submitted admissible proof that on April 25, 2018, approximately a week later, he went to see Dr. Saulle and again complained of lower back pain. Dr. Saulle conducted a physical examination, which included objective range of motion testing, and made the following finding with respect to plaintiff's lumbar spine:

Lumbar Spine

Normal	Observed		Limitations
Flexion	90	65	27.77%
Extension	30	25	16.66%
R & L Lateral Bending	35	25	28.57%

Plaintiff also submitted the report of Dr. Heftel, who conducted a recent medial examination of the plaintiff on June 4, 2021. With respect to plaitniff's lumbar spine, Dr. Heftel found as follows:

> **Lumbar exam**: There is diminished range of motion with flexion to 50 degrees/90, and extension to 20 degrees / 30 degrees. There is tenderness over the sacroiliac joints. Straight leg raise was positive at 50 degrees/60 degrees. There is bilateral paralumbar tenderness and spasm noted. Midline tenderness is at L4 and L5. The patient had difficulty standing from a seated position and climbing on and off the examination table.

Dr. Heftel also personally reviewed the Radiology IME report of Dr. Scott A. Springer as well as the actual CT and MRI images of plaintiff's lumbar spine. Dr. Heftel pointed out that Dr. Springer's impression regarding plaintiff's lumbar spine was that he had a disc bulge at the L2-L3 level that caused a mass effect on the anterior thecal sac as well as a bulge at L5-S1 that caused a mass effect on the anterior thecal sac. He also pointed out that Dr. Springer found a narrowing of the bilateral neural foramen with abutment of the exiting bilateral L5 nerve roots. According to Dr. Heftel, however, and contrary to Dr. Springer's opinion, the plaintiff suffered herniated discs at L3-L4 and L5-S1. Dr. Heftel also stated that in an effort to minimize the severity of Mr. Spadola's injuries, Dr. Springer failed to mention that there is mass effect on the thecal sac at 2 levels and bilateral neural foramen narrowing with abutment of the L5 nerve roots.

Dr. Heftel concluded that the plaintiff suffered lumbar strain, lumbar herniated discs and lumbar radiculopathy. He attributed these injuries top the accident of April 16, 2008, and opined that his injuries were permanent. He also recommended additional lumbar trigger point injections as well as lumbar epidural injections. In sum, plaintiff submitted medical evidence that was contemporaneous with the accident as well as from a recent examination of the plaintiff, which included objective range of motion studies, supporting his position that the suffered significant/permanent limitations to his lumbar spine that were causally related to the subject accident. (*see Dixon v. Fuller*, 79 A.D.3d 1094, 1094, 913 N.Y.S.2d 776; *Ortiz v. Zorbas*, 62 A.D.3d 770, 771, 878 N.Y.S.2d 442; *Azor v. Torado*, 59 A.D.3d 367, 368, 873 N.Y.S.2d 655).

Since the plaintiff raised a triable issue of fact as to whether he suffered a serious injury to his lumbar spine, the Court need not consider whether he also suffered serious injuries to the other parts of his body that he claims were injured as a result of the accident.

The Court has considered the remaining arguments raised by the defendant in support of the motion and find them to be without merit.

Accordingly, it is hereby

ORDERED that the motion is **DENIED.**

This constitutes the decision and order of the Court.

Dated: April 13, 2022

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020