

**Priester v Webb**

2022 NY Slip Op 34878(U)

September 30, 2022

Supreme Court, Kings County

Docket Number: Index No. 514077/2019

Judge: Odessa Kennedy

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This opinion is uncorrected and not selected for official publication.

PRESENT:

HON. ODESSA KENNEDY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 2

SAIQUAN PRIESTER,

Plaintiff,

Index No: 514077/2019

-against-

VIRICE T. WEBB, MD R. KARIM and AUTUMN  
CAB CORP.,

ORDER

Defendants.

**Motion Sequence Nos. 3 and 4**

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

Papers	NYSCEF Document No.
Notice of Motion, Affirmation in Support	74-83
Opposition	107-116
Notice of Cross-Motion, Affirmation in Support	94-96
Opposition	117-126
Reply	129

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Upon review of the foregoing papers and after oral argument held and placed on the record on September 14, 2022, the motion of defendants MD R.

Karim and Autumn Cab Corp., and the cross-motion of defendant Virice T. Webb,

for summary judgment dismissing the complaint on the grounds that the plaintiff cannot meet the serious injury threshold under New York Insurance Law § 5102(d) are denied.

In this action to recover damages for personal injuries allegedly sustained by plaintiff as a result of an automobile accident, the defendants move for summary judgment to dismiss the complaint on the grounds that the plaintiff cannot meet the serious injury threshold under New York Insurance Law § 5102(d).

Plaintiff claims that as a result of the subject incident he sustained significant injuries including those resulting in lumbar discectomy.

A defendant who seeks summary judgment on the threshold serious injury issue has the initial burden to establish a prima facie case through evidence in admissible form that plaintiff's injuries were not serious within the meaning of New York Insurance Law § 5102(d). *Baez v. Rahamatali*, 6 NY3d 868, 869 (2006) ("Defendants met their initial burden of establishing that plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102[d]"); *Pagano v. Kingsbury*, 182 AD2d 268, 270 (2d Dept 1992) ("It is well settled that evidence submitted in support of a motion for summary judgment must be in admissible form"). "Once a defendant submits evidence demonstrating the lack of a serious injury, the burden shifts to the plaintiff to come forward with sufficient evidence to

overcome the defendant's motion". *Attivissimo v. Kugler*, 226 AD2d 658, 658 (2d Dept 1996).

"Where conflicting medical evidence is offered on the issue of whether the plaintiff's injuries are permanent or significant, and varying inferences may be drawn therefrom, the question is one for the jury." *Noble v. Ackerman*, 252 AD2d 392, 395 (1st Dept 1998). *See also Wilcoxon v. Palladino*, 122 AD3d 727, 728 (2d Dept 2014) (Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d), in light of the conflicting expert medical opinions submitted by the parties).

Here, the parties' medical providers and experts submitted conflicting medical opinions as to whether plaintiff's alleged injuries are serious and casually related to the subject incident within the meaning of Insurance Law §§ 5102 and 5104. The Court further notes that defendant's medical expert did not know plaintiff underwent lumbar discectomy as he claims plaintiff informed him that he had not undergone any surgery.

Accordingly, summary judgment is not warranted as issues of fact exist that should be resolved by the trier of fact after trial.

Accordingly, it is hereby

ORDERED, that the motion of defendants MD R. Karim and Autumn Cab Corp. (Seq. No. 3), and the cross-motion of defendant Virice T. Webb's (Seq. No. 4) for summary judgment are DENIED.

This constitutes the Order of the Court.

Dated: September 30, 2022

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HON. ODESSA KENNEDY

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