

Whitehead v Kerton

2022 NY Slip Op 34897(U)

March 30, 2022

Supreme Court, Kings County

Docket Number: Index No. 508106/2019

Judge: Peter P. Sweeney

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

Index No.: 508106/2019
Motion Date: 1-10-22
Mot. Seq. No.: 3

-----X
ARMOND WHITEHEAD,

Plaintiff,

-against-

DECISION/ORDER

SHANE E. KERTON, RYDER TRUCK RENTAL INC.
and ARTEX INC.,

Defendants.
-----X

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KINGS COUNTY CLERK
FILED

Upon the following e-filed documents, listed by NYSCEF as item numbers 63-87, 90-87, the motion is decided as follows:

The defendants, SHANE E. KERTON, RYDER TRUCK RENTAL INC. and ARTEX INC., move for an Order, pursuant to CPLR §3212 (i) granting summary judgment dismissing plaintiff's complaint as against defendant RYDER TRUCK RENTAL, INC. under the Graves Amendment, and (ii) granting summary judgment dismissing plaintiff's complaint against all defendants on the ground that the plaintiff, ARMOND WHITEHEAD, did not sustain a "serious injury" as defined by Insurance Law § 5102(d).

The plaintiff commenced this action claiming that he suffered personal injuries on December 24, 2018, as a result of the motor vehicle accident that occurred on Frederick Douglas Blvd. near its intersection with FDR Drive, New York, New York. The accident involved a collision between a vehicle that the plaintiff was operating, and a vehicle operated by defendant, SHANE E. KERTON, which was owned by defendant RYDER TRUCK RENTAL INC. ("Ryder") and leased to defendant ARTEX INC.

Pursuant to the Graves Amendment (49 U.S.C. § 30106), the owner of a leased or rented motor vehicle cannot be held liable for personal injuries resulting from the use of such vehicle if: (1) the owner is engaged in the trade or business of renting or leasing motor vehicles, and (2) there is no negligence or criminal wrongdoing on the part of the owner (*see* 49 U.S.C. § 30106[a]; *Bravo v. Vargas*, 113 A.D.3d 579, 580, 978 N.Y.S.2d 307; *Ballatore v. HUB Truck Rental Corp.*, 83 A.D.3d 978, 979, 922 N.Y.S.2d 180). In support of the motion, defendants

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submitted admissible proof demonstrating, prima facie, that at the time of the accident, Ryder engaged in the business of renting and leasing motor vehicles, that Ryder had leased the truck that was involved in the accident to ARTEX INC., and that Ryder was free from negligence. The plaintiff did not raise a triable issue of fact on these issues. Indeed, the plaintiff did not oppose that branch of the motion based on the Graves Amendment. Accordingly, that branch of the motion for summary judgment dismissing the action against defendant Ryder based on the Graves Amendment is **GRANTED**.

The Court will now address that branch of defendants' motion for summary judgment dismissing plaintiff's complaint on the ground that he did not suffer a "serious injury" within the meaning of Insurance Law § 5102(d). Assuming, arguendo, that the defendants' submissions demonstrated, prima facia, that the plaintiff did not suffer a serious injury as a result of the accident, the affirmation of STANLEY IKEZI, M.D., which was submitted in opposition, clearly raised triable issues of fact as to whether the plaintiff suffered serious injuries to his cervical and lumbar regions of his spine as a result of the accident under the permanent consequential limitation of use and/or the significant limitation of use categories of Insurance Law § 5102(d) as a result of the accident.

Dr. Ikezi concluded that as a result of the accident, the plaintiff suffered injuries which include disc herniations with nerve root impingement at L3-L4 and L4-L5 and disc herniations at C3-C4, C5-C6 and C6-C7. He conducted examinations that were contemporaneous with the accident as well a recent examination and his examinations included objective range of motion studies by use of a goniometer. Dr. Ikezi found that there were significant limitations in the plaintiff's cervical and lumbar spine, which he concluded were permanent and causally related to the subject accident, which cannot be characterized as minor, mild or slight (*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).

Contrary to defendants' contention, Dr. Ikezi opinion that the December 24, 2018, accident was the cause of plaintiff's injuries was sufficient to rebut the opinion of defendants' biomechanical on the issue of causation. Further, Dr. Ikezi also adequately accounted for the

injuries that the plaintiff suffered as a result of the prior motor vehicle accident that occurred on November 7, 2018.

At this deposition, the plaintiff testified that he was involved in a prior motor vehicle accident on November 7, 2018, and that as a result of that accident and prior to December 24, 2018, he admitted to receiving treatment for his lower back, shoulders, and left knee. He also testified that he filed a lawsuit as a result of the accident which is still pending in Bridgeport, Connecticut.

Dr. Ikezi stated that he treated Mr. Whitehead for the injuries he suffered in the prior accident and pointed out that the MRI studies of plaintiff's cervical and lumbar spine that were taken in November 2018 only showed that Mr. Whitehead had bulging discs at C2-C3, C3-C4, C4-C5 and C5-C6 and at L3-L4, L4-L5 and L5-S1, while the MRI studies taken after the December 24, 2018 accident show that the plaintiff suffered disc herniations at C3-C4, C5-C6 and C6-C7, as well as disc herniations at L3-L4 and L4-L5. It is Dr. Ikezi's opinion that the accident of December 24, 2018, exacerbated and aggravated Mr. Whitehead's prior injury/condition at L5-S1 and necessitated the multiple translaminal epidural steroid injections at L5-S1 which were administered on February 9, 2019, March 23, 2019, and August 10, 2019. It is significant that the plaintiff underwent fusion surgery to in April of 2019 to the L4-L5 region.

Since Dr. Ikezi's affirmation raised triable issues of fact as to whether the plaintiff suffered a serious injury to his cervical and/or lumbar spine, the court did not address whether his affirmation raised triable issues of fact as to whether the plaintiff sustained a serious injury to any other parts of his body.

The Court has considered defendants' remaining arguments in support of the motion and find them to be unavailing. Accordingly, that branch of defendant's motion to dismiss the action on the ground that he planted did not suffer a serious injury within the meaning of Insurance Law § 5102(d) is denied.

For all of the above reasons, it is hereby

ORDRED that that the motion is decided as indicated above.

This constitutes the decision and order of the Court.

Dated: March 30, 2022

PPS

PETER P. SWEENEY, J.S.C.

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

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