

Griffin v Lux Credit Consultants LLC

2023 NY Slip Op 32654(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 515365/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of July 2023

HONORABLE FRANCOIS A. RIVERA

-----X
SONYA GRIFFIN and TROY JACKSON

Plaintiff,

- against -

LUX CREDIT CONSULTANTS LLC, and
JOHN DOE

Defendants.

-----X

Recitation in accordance with CPLR 2219(a) of the papers considered on the notice of motion of defendants filed on September 30, 2022, for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint of Troy Jackman (hereinafter Jackman) on the grounds that he did not suffer a serious injury as defined in Insurance Law § 5102(d).

- Notice of motion
- Affirmation in support
Exhibits A-F
- Statement of material facts
- Affirmation in opposition
Exhibits A-E
- Counterstatement of material facts
- Affirmation in reply

BACKGROUND

On August 20, 2022, Sonya Griffin and Troy Jackson commenced the instant

action for damages for personal injuries by filing a summons and verified complaint with

the Kings County Clerk's office (KCCO). On September 18, 2020, defendant Lux Credit Consultants LLC, interposed and filed a verified answer with the KCCO.

The plaintiffs verified complaint alleges the following salient facts. On September 29, 2019, plaintiff, Sonya Griffin, was lawfully operating a 2016 Ford motor vehicle bearing State of Pennsylvania registration number LBS5337, with Troy Jackson as a passenger, on 2nd Avenue at its intersection with East 84th street, New York, New York. At that time, date and place, a vehicle operated by John Doe with the permission of its owner, Lux Credit Consultants LLC, collided with the vehicle operated by Sonya Griffin (hereinafter the subject accident). The collision was due to the defendants' negligent operation of their vehicle. The subject accident caused serious physical injury to the plaintiffs.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Guiffirda v. Citibank*, 100 N.Y.2d 72 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v. Gervasio*, 81 N.Y.2d 1062 [1993]). If a prima facie showing has been made, the burden shifts to the opposing

party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez v. Prospect Hospital*, supra, 68 N.Y.2d at 324).

Pursuant to CPLR 3212(b) a court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, "that there is no defense to the cause of action or that the cause of action or defense has no merit." Further, all of the evidence must be viewed in the light most favorable to the opponent of the motion (*Marine Midland Bank v. Dino & Artie's Automatic Transmission Co.*, 168 A.D.2d 610 [1990])" (*People ex rel. Spitzer v. Grasso*, 50 AD3d 535, 544 [1d 2008]).

Insurance Law § 5102(d) defines serious injury as: A personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

A defendant can establish that the plaintiff's injuries are not serious within the meaning of Insurance Law § 5102(d) by submitting the affidavits or affirmations of medical experts who examined the plaintiff and conclude that no objective medical findings support the plaintiff's claim." (*see Grossman v. Wright*, 268 A.D.2d 79, 83 [2d

2000]). With this established, the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submissions by demonstrating a triable issue of fact that a serious injury was sustained within the meaning of the Insurance Law. The plaintiff in such a situation must present objective evidence of the injury.” (*Id.* at 84.)

In support of the instant motion, defendants submitted, among other things, the Troy Jackson’s bill of particulars. Jackson’s bill of particulars alleged injury to his left shoulder, including a partial rotator cuff necessitating a surgery. The left shoulder surgery was performed on February 11, 2020, and included arthroscopy, debridement, partial bursectomy and partial synovectomy. Jackson also alleged multiple disc herniations of his cervical spine and serious injury under the permanent consequential, significant limitation and 90/180 category of Insurance Law 5102(d).

The defendants also submitted the affirmed medical report of Dr. Gregory Chiaramonte, an orthopedist who they hired to conduct an independent medical examination of Jackson. The examination was performed on September 20, 2021. Dr. Chiaramonte examined Jackson, conducted range of motion testing of his left shoulder and cervical and lumbar spine and found no range of motion restrictions.

Dr Chiaramonte found that Jackson had recovered from cervical and lumbar spine sprains and strains. Dr. Chiaramonte, however, did not address the significance of Jackson’s left shoulder surgery conducted nineteen months before his examination of Jackson. Nor did he offer an opinion regarding Jackson’s condition during the first six-month period after the subject accident. In sum, the papers submitted by the defendant failed to adequately address Jackson’s claim,⁴ set forth in the bill of particulars, that he

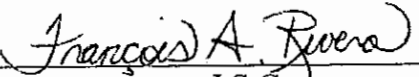
sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) (*Alperin v Herwerth*, 162 AD3d 832, 833 [2nd Dept 2018]), Consequently, the defendants did not eliminate all material issues of fact on whether Jackson sustained a serious injury under 90/180 category. The defendants' motion is therefore denied without regard to the sufficiency of the plaintiffs' opposition papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

CONCLUSION

The motion of the defendants for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint of Troy Jackman on the grounds that he did not suffer a serious injury as defined in Insurance Law § 5102(d) is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

5 of HON. FRANCOIS A. RIVERA
J.S.C.