

**Moore v Polanco Enter. Inc.**

2023 NY Slip Op 34957(U)

December 8, 2023

Supreme Court, Kings County

Docket Number: Index No. 511457/2020

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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At an I.A.S. Trial Term, Part 13 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Brooklyn, City and State of New York, on the 8<sup>th</sup> day of December 2023.

PRESENT:

HON. RUPERT V. BARRY, A.J.S.C.

LISA MOORE,

Plaintiff,

Cal. No.: 31

Motion Seq. No.: 2

-against-

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POLANCO ENTERPRISE INC., ASHRAF  
ELSIDDIG, and ALEJANDRA HILARIO,

**DECISION & ORDER**

Defendants.

	NYSCEF Doc. Nos.
Notice of Motion, Affirmation, and Exhibits	36-43
Answering Affirmation, Affidavits/Affirmations, and Exhibits	45-54

Upon the foregoing cited papers and following oral argument, Defendants POLANCO ENTERPRISE INC. and ASHRAF ELSIDDIG's motion for an order, pursuant to CPLR § 3212, granting summary judgment in their favor on the grounds that Plaintiff's injuries do not satisfy the "serious injury" threshold requirement of New York Insurance Law Section 5102(d), is decided as follows:

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Plaintiff raised an issue of fact as to whether she sustained a permanent consequential limitation of use of a body organ or member and a significant limitation of use of a body function or system by presenting admissible medical evidence that conflicts with the medical evidence presented by Defendants POLANCO ENTERPRISE INC. and ASHRAF ELSIDDIGF. Where there is conflicting medical evidence submitted by the parties, the issue of whether Plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d), and whether those injuries are causally related to the accident, should be submitted to a jury (*see Ocasio v Zorbas*, 14 AD3d 499, 500 [2d Dept 2005]).

Plaintiff also provided an adequate explanation for the gap in her treatment history through the affidavit of her chiropractor, Jeff Mollins, D.C., who stated in his affidavit that Plaintiff had reached maximum medical improvement and any further treatment would have been palliative in nature (*see Bonilla v Tortoriello*, 62 AD3d 637, 639 [2d Dept 2009]).

Defendants POLANCO ENTERPRISE INC. and ASHRAF ELSIDDIGF were however able to meet their *prima facie* burden of showing that Plaintiff did not sustain a medically determined injury or impairment of a non-permanent nature which prevents her from performing substantially all of the material acts which constitute her 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. Accordingly, it is

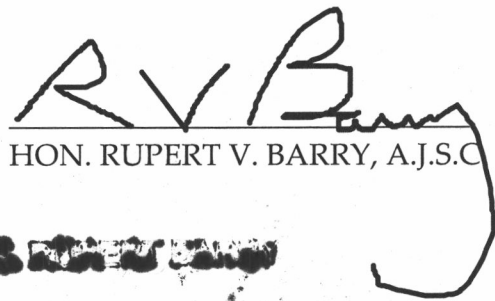
ORDERED, that Defendants POLANCO ENTERPRISE INC. and ASHRAF ELSIDDIGF's motion for summary judgment is **GRANTED only as** to Plaintiff's claim that she sustained a medically determined injury or impairment of a non-permanent nature which prevents her from performing substantially all of the material acts which constitute her 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

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impairment. Defendants POLANCO ENTERPRISE INC. and ASHRAF ELSIDDIGF's motion for summary judgment is **denied in all other respects**.

This constitutes the decision and order of this Court.

\*All applications not specifically addressed herein are Denied.

  
HON. RUPERT V. BARRY, A.J.S.C.

**HON. RUPERT BARRY**

**HON. RUPERT BARRY**



KINGS COUNTY CLERK  
FILED  
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