

Holliday v City of New Rochelle

2023 NY Slip Op 34992(U)

August 29, 2023

Supreme Court, Westchester County

Docket Number: Index No. 64441/2017

Judge: Hal B. Greenwald

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

DORIAN HOLLIDAY,

Plaintiff,

Index No.: 64441/2017

-against-

DECISION AND ORDER
(Motion Sequence 5)

THE CITY OF NEW ROCHELLE, and
CARLOS JIMINEZ,

Defendants.

-----X

Greenwald, J.S.C.

RELEVANT BACKGROUND

On March 9, 2017, Plaintiff filed a notice of claim against the City of New Rochelle alleging that he was injured while being transported to the New Rochelle Police Department while in police custody on December 10, 2016, when the police car in which he was being transported and was being driven by Officer Jimenez came in contact with a fixed object on Washington Avenue in New Rochelle. (See Defendant’s exhibit A; NYSCEF Doc. No. 88). Plaintiff commenced this action seeking damages for personal injuries, by filing a summons and complaint on or about September 20, 2017. (See Defendant’s exhibit B; NYSCEF Doc. No. 89). Defendants filed an answer on October 19, 2017. (See Defendant’s exhibit C; NYSCEF Doc. No. 90). Thereafter, Defendants moved to amend their answer which was subsequently granted by Decision and Order (Lubell, J). (See Defendant’s exhibit D; NYSCEF Doc. No. 91). Defendants filed an amended answer on January 30, 2019. (See Defendant’s exhibit E; NYSCEF Doc. No. 92). A Note of Issue was filed on March 22, 2019 (See Defendant’s exhibit G; NYSCEF Doc. No. 94)

On May 6, 2019, Defendants moved for an order granting summary judgment dismissal of the complaint as against Plaintiff (MS #2) and Plaintiff cross-moved for an Order granting partial summary judgment as to the liability as against Defendants (MS #3). Both motions were denied by Decision and Order (Ecker, J) dated September 11, 2019. (See Defendant’s exhibit I; NYSCEF Doc. No. 96).

On or about January 29, 2020, this matter was marked off the trial calendar. On January 5, 2021, Plaintiff moved for an order restoring this case to the trial calendar or in the alternative, referring this matter to the compliance part to set a new Note of Issue date and compelling Defendants to conduct Plaintiff’s medical exam or deem same waived (MS #4). Plaintiff’s motion

was granted to the extent that the Note of Issue was vacated, and the matter was referred to the compliance part for further discovery. (*See* Defendant's Exhibit J; NYSCEF Doc. No. 97).

On November 7, 2022, Plaintiff filed a Note of Issue and Certificate of Trial Readiness. (*See* Defendant's exhibit K; NYSCEF Doc. No. 98).

FACTS

Motion for Summary Judgment (MS #5)

Defendants now move for summary judgment on the grounds that Plaintiff fails to meet the serious injury threshold requirement as mandated by Insurance Law § 5104 and defined by Insurance Law § 5102(d).¹ Defendants argue that Plaintiff's alleged injuries do not fall under any of the nine categories that constitute a "serious injury" pursuant to Insurance Law § 5102(d). Defendants rule out the first five categories – death, dismemberment, significant disfigurement, a fracture, and loss of a fetus, and claim Plaintiff's alleged injuries do not fall into the last four remaining categories as follows:

A personal injury resulting in a permanent loss of use of a body organ, member, function or system: Defendants assert that only a total loss of use is compensable under this category and Plaintiff does not claim to have lost total use of any part of his body. Defendants reference Plaintiff's Bill of Particulars, where Plaintiff alleges a partial and permanent loss of use of the left arm, and as a result, the entire body. (*See* Defendant's exhibit F; NYSCEF Doc. No. 93). Moreover, Defendants highlight Plaintiff's deposition where he testifies "no, I haven't lost use" of his left arm. (*See* Defendant's exhibit P; NYSCEF Doc. No. 103). They argue that a permanent limitation must be supported by medical records and here, there is no evidence to support that Plaintiff has a permanent injury.

A personal injury resulting in a permanent consequential limitation of use of a body organ or member: Defendants assert that objective medical evidence of a permanent, rather than a minor, mild, or slight, limitation, of a body member or organ, is needed to establish this category. Defendants argue that it's clear that the medical report of Dr. Richard R. Weinstein, a board-certified orthopedist, and the medical report of Dr. Jessica F. Berkowitz's, a board-certified radiologist, demonstrate that Plaintiff did not sustain an injury that appropriately falls

¹ Defendants annexed 19 exhibits (A – S) to their motion. Exhibit N was received by Chambers on August 17, 2023 and consisted of a CD-ROM disk that allegedly had dash cam footage. However, the disk was empty. Exhibit N was not reviewed in the writing of this decision.

within this category. (*See* Defendant’s exhibit R & S; NYSCEF Doc. No. 105 & 106).

Specifically, Dr. Weinstein’s report demonstrates that Plaintiff has no limitations in his range of motion.

A personal injury resulting in a significant limitation of use of a body function or system: Similarly, Defendants assert that objective quantified evidence of a permanent, rather than a minor, mild, or slight, limitation, is needed to establish this category. Defendants argue that Dr. Weinstein’s and Dr. Berkowitz’s reports demonstrate that plaintiff’s injuries were degenerative in nature and not causally related to the accident. Defendants reiterate that Plaintiff’s physical examination by Dr. Weinstein revealed no restrictions in Plaintiff’s range motion. Defendants claim that Plaintiff has no disability, and the medical evidence demonstrates that Plaintiff is physically capable of full duty work with no restrictions and requires no further orthopedic treatment, physical therapy, household help, special transportation, modalities, durable medical equipment, or diagnostic testing. (*See* Defendant’s exhibit R; NYSCEF Doc. No. 105).

A personal injury resulting in 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: Defendants assert that Plaintiff does not meet the threshold of this category because in his Bill of Particulars, Plaintiff did not claim he was prevented from performing “substantially all,” of his usual activities for 90 of the 180 days following the accident, but rather “curtailment of a great many activities.” (*See* Defendant’s exhibit F; NYSCEF Doc. No. 93). Defendants assert that the undisputed evidence establishes same. Defendants also draw attention to the fact that Plaintiff was unemployed at the time of the accident and claimed that he was only confined to bed or home for approximately two weeks. (*See* Defendant’s exhibit F; NYSCEF Doc. No. 93 ¶ 12-13).

Lastly, Defendants argue that Plaintiff did not sustain economic loss in excess of \$50,000, which under New York Insurance Law § 5104, could make Plaintiff eligible for relief without sustaining a “serious injury.”

Opposition

In opposition, Plaintiff argues that Defendants' motion for summary judgment should be denied.

First, Plaintiff asserts that Defendants have failed to make prima facie showing of no serious injury because Defendants' motion does not refute the existence of Plaintiff's injuries. Plaintiff also argues that the medical doctors' reports that Defendants annexed to their motion are insufficient. Plaintiff argues that Dr. Weinstein contradicts himself because he stated that Plaintiff's injuries were resolved, but also reported tenderness over certain muscles. Defendants assert that Dr. Berkowitz's findings that Plaintiff's injuries are not causally related to the accident is contrary to the opinion of Dr. Weinstein who found that the injuries are causally related to the accident.

Plaintiff's second argument in opposition is that issues of fact exist as to whether the Plaintiff has sustained a permanent consequential limitation of the use of a body organ or member and/or a significant limitation of use of a body function or system. Plaintiff argues that the diagnostic films reviewed by Plaintiff's radiologist and orthopedist qualify as objective evidence of the serious injury sustained by the Plaintiff because within the context of injuries to vertebral discs, the results constitute a serious injury. Plaintiff submits that the results of the MRIs underwent by Plaintiff on February 6, 2017, prove that Plaintiff provided legally sufficient and objective evidence to establish the existence of the injuries.

Plaintiff further argues that the affirmed report of Dr. Allan Weissman, and affirmed report of Dr. Hank Ross, an orthopedic surgeon, in conjunction with the existence of Plaintiff's injuries and his description of the effect that his injuries have had on his activities, provides adequate proof of the extent or degree of Plaintiff's physical limitations to substantiate his claim of serious injury. Plaintiff states that it was Dr. Weissman's opinion that Plaintiff's injuries to his cervical and lumbar spines as well as his need for lumbar spine surgery were causally related to the accident. Plaintiff asserts that it was Dr. Ross' opinion that Plaintiff's condition was permanent in nature and that he was likely to continue to suffer from these symptoms as well as suffer exacerbations of variable intensity and severity.

The final point that Plaintiff argues is that the effect that his injuries had on his usual activities for 90 out of the first 180 days following the accident raises an additional issue of fact as to whether he sustained a serious injury within the meaning of the Insurance Law. Plaintiff

argues that Defendants failed to meet their burden under the 90/180 category because Plaintiff was a healthy 26-year-old who led an active lifestyle prior to the accident. He testified that following the accident, he was unable to work out, unable to run, and play sports as he did prior to the accident, and now is unable to cope with this lifestyle. (NYSCEF Doc. No. 103). Plaintiff draws upon his testimony that at the time of the accident he had a job interview set up with White Plains Five Guys, scheduled about a month or two after the accident but he was allegedly told that he could not be hired because of his injuries. (NYSCEF Doc. No. 103). Plaintiff avers that despite all the physical therapy and treatment he received since the accident, he continued to feel pain in his neck and back. The pain continued to interfere with his life on a daily basis, such as difficulty with prolonged sitting, which caused numbness in his legs. He noted that he continues to experience shooting pain down and numbness in his legs. He also noted that he experiences numbness in his arms when lying in a certain position. (NYSCEF Doc. No. 103).

Reply

In reply to Plaintiff's motion papers and in further support of their motion for summary judgment, Defendants argue that pursuant to CPLR § 3212 and Gen. Mun. Law §50-e, summary judgment should be granted in favor of the Defendants and the Plaintiff's Complaint should be dismissed.

Defendants argue that Plaintiff failed to raise a material issue of fact about whether he sustained a serious injury in the accident under the "permanent consequential limitation" or "significant limitation" categories of Insurance Law § 5102(d). Defendants express that Dr. Berkowitz reviewed the MRI images of the cervical and lumbar regions of plaintiff's spine that were obtained on February 6, 2017, less than two months after the subject accident and concluded that the small bulges in the two cervical discs were caused by degeneration, and that there was no injury at all visible in the MRI images of Plaintiff's lumbar spine. Defendants assert that those conclusions set forth a prima facie case that Plaintiff did not sustain a serious injury in the accident.

Defendants argue that the opposition papers contain no competent evidence of any contemporaneous determination that Plaintiff sustained any injury in the accident or any doctor's report detailing a contemporaneous examination disclosing any injury to Plaintiff's neck or back, let alone an injury caused by the accident. Defendants assert that in the absence of evidence that

Plaintiff exhibited a serious injury immediately, or at least soon after the accident, he has failed to raise a material issue of fact about whether he sustained a serious injury in the accident.

Defendants address the four unnumbered exhibits contained in Plaintiff's opposition papers. Defendants argue that Plaintiff's first exhibit, two MRI reports, and Plaintiff's fourth exhibit, hospital records, are neither sworn to nor affirmed and also do not address the issue of causation.

Defendants acknowledge that Plaintiff's second exhibit, an affirmation from Dr. Weissman and a surgical report, and Plaintiff's third exhibit, a report of Dr. Ross, conclude a causal relationship between the accident and Plaintiff's injuries. However, Defendants accentuate that neither Dr. Weissman nor Dr. Ross set forth any basis for their opinions, and neither Dr. Weissman nor Dr. Ross address Dr. Berkowitz's determination that the disc bulges were caused by degenerative changes rather than by trauma. Their opinions therefore fail to raise a material issue of fact sufficient to defeat this motion. Additionally, Defendants point out that Plaintiff's third exhibit concerned an examination of Plaintiff more than six years after the accident and says nothing about Plaintiff's condition immediately or soon after the accident.

Lastly, Defendants argue that since Plaintiff has failed to raise a material issue of fact about whether he sustained any injury in the accident, he cannot have sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d). Additionally, (add nonetheless to decision), Defendants reiterate that Plaintiff admitted in his bill of particulars that after the accident, he was "confined to bed and home for a period of approximately 2 weeks," and thus he could not have sustained an injury that prevented him from performing substantially all of the material acts constituting his usual and customary daily activities for at least 90 days during the 180 days immediately after the accident.

Analysis

Pursuant to New York's Insurance Law, a plaintiff is permitted to recover in tort for any "basic economic loss" that exceeds \$50,000. N.Y. Ins. Law §§ 5102(a), 5104(a). Basic economic loss includes expenses such as medical expenses and lost wages. § 5102(a). New York's Insurance Law also allows a plaintiff to recover for non-economic loss, *i.e.*, pain and suffering, but only if the plaintiff sustained a "serious injury." *Id.* § 5104(a).

Pursuant to CPLR 3212(e), summary judgment may be awarded when there are no issues of material fact to be resolved. "On a motion for summary judgment, facts must be viewed in the

light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action.” Vega v. Restani Const. Corp., 18 N.Y.3d 499, 503, 965 N.E.2d 240, 242 (2012) (internal citations omitted).

When moving for summary judgment in an action based on Insurance Law § 5104, the moving party bears the burden to establish that the Plaintiff did not sustain a “serious injury” within the meaning of Insurance Law § 5102 (d). If the moving party makes a prima facie case that the plaintiff’s injuries are “not serious,” the burden then shifts to plaintiff to come forward with sufficient evidence to overcome defendant's motion by demonstrating that she sustained a serious injury. *See Gaddy v. Eyley*, 79 N.Y.2d 955, 956, 591 N.E.2d 1176 (1992).

In the instant matter, Plaintiff alleges damages of approximately \$32,000 in his Bill of Particulars. (*See* Defendant’s exhibit F; NYSCEF Doc. No. 93, ¶ 15). Thus, Plaintiff’s claim falls under the “non-economic loss” category. This leads to the analysis of what constitutes a “serious injury.” The nine categories that constitute a “serious injury” pursuant to insurance Law 5102(d), are personal injuries resulting in one of the following:

1. Death
2. Dismemberment
3. Significant disfigurement
4. A fracture
5. Loss of a fetus
6. Permanent loss of use of a body organ, member, function or system
7. Permanent consequential limitation of use of a body organ or member
8. Significant limitation of use of a body function or system
9. 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.

Here, it is undisputed that Plaintiff's alleged injuries do not qualify under the first five categories, namely: death, dismemberment, significant disfigurement, a fracture, and loss of a fetus. Defendants made prima facie showing that Plaintiff did not suffer a serious injury pursuant to the remaining four categories of Insurance Law § 5104 and Plaintiff failed to come forward with sufficient evidence to overcome Defendants' prima facie showing. The remaining four categories are reviewed as followed:

Permanent loss of use of a body organ, member, function, or system: As the Court of Appeals has concluded, "only a total loss of use is compensable under the "permanent loss of use" exception to the no-fault remedy." Oberly v. Bangs Ambulance Inc., 96 N.Y.2d 295, 297, 751 N.E.2d 457 (2001). Plaintiff's Bill of Particulars allege a partial and permanent loss of use of his left arm, and as a result, the entire body. (NYSCEF Doc. No. 93, ¶ 10). It is clear from pages 53 and 54 of the EBT conducted of Plaintiff on July 27, 2018, that he testified that he does not have a permanent loss of use of his left arm. (Defendants Exhibit P; NYSCEF Doc. No. 103). Qualitative, objective medical proof is necessary for a plaintiff to meet the "serious injury" threshold under the No-Fault Law. Toure v. Avis Rent A Car Sys., Inc., 98 N.Y.2d 345, 350, 774 N.E.2d 1197, 1199 (2002). Plaintiff failed to provide said proof.

Permanent consequential limitation of use of a body organ or member and Significant limitation of use of a body function or system: "For these two statutory categories, [the Court of Appeals has] held that "[w]hether a limitation of use or function is 'significant' or 'consequential' (i.e., important * * *) relates to medical significance and involves a comparative determination of the degree or qualitative nature of an injury based on the normal function, purpose and use of the body part"" Toure v. Avis Rent A Car Sys., Inc., 98 N.Y.2d 345, 353, 774 N.E.2d 1197, 1201 (2002) (internal citation omitted). Plaintiff must present objective medical evidence and "[m]ere subjective complaints of pain alone, as well as medical opinions clearly based upon such complaints, are insufficient to raise a triable issue of fact." Barrett v. Howland, 202 A.D.2d 383, 384, 608 N.Y.S.2d 681 (2nd Dep't 1994). It is well-settled that a minor, mild, or slight limitation of use is insignificant within the meaning of the statute. See Gaddy v. Eyler, 79 N.Y.2d 955 (1992).

Plaintiff claims multiple injuries relating to his wrist, neck and back. (See Defendant's exhibit F; NYSCEF Doc. No. 93). Plaintiff claims that he did not have any complaint of wrist pain, neck pain, or back pain prior to the accident, however, the medical report from Dr.

Weinstein and Dr. Berkowitz claims otherwise. (*See* Plaintiff's Affirmation in Opposition; NYSCEF Doc. No. 112 ¶ 14). The report from Dr. Berkowitz states that the disc bulges found during the MRI examination are degenerative in nature and denied a causal relationship between Plaintiff's alleged accident and the MRI examination. The report of Dr. Weinstein states that Plaintiff has no limitations in his range of motion and originally stated a causal relationship between the injuries and accident; and in an addendum written by Dr. Weinstein, he clarified,

After reviewing these records, it is clear the claimant did have previous neck problems and lower back problems despite his claim he had no previous neck or back problems. In light of the fact he had previous back pain which is described as chronic in 2013, and previous neck injuries/problems prior to the accident in 2010, his reported injury to his neck and back on 12/10/2016 was only exacerbation of previous existing problems.

(*See* Defendant's exhibit R; NYSCEF Doc. No. 105).

Nonetheless, causation alone would not suffice in having Plaintiff's alleged injuries meet the "serious injury" threshold without a qualitative or quantitative assessment differentiating the Plaintiff's "serious" injuries from mild, moderate, or slight injuries. Scott v. Aponte, 49 A.D.3d 1131, 854 N.Y.S.2d 243 (3rd Dep't 2008); Park v. Champagne, 34 A.D.3d 274, 276, 824 N.Y.S.2d 84 (1st Dep't 2006) (stating that "proof of a herniated disc, without additional objective medical evidence establishing that the accident resulted in significant physical limitations, is not alone sufficient to establish a serious injury" (internal quotations omitted)). Plaintiff presented four exhibits (A-D), however failed to present sufficient evidence to overcome defendants' motion.

Exhibit A includes two MRI reports and, although Defendants argued the reports were unaffirmed, an affirmation from Dr. Losik, a radiologist. The contents of this exhibit do not address the issue of causation. Thus, Plaintiff failed to raise an issue of fact with exhibit A. *See* Fernandez v. Hernandez, 151 A.D.3d 581, 582, 57 N.Y.S.3d 469 (1st Dep't 2017).

Exhibit B is a surgical report and an affirmation from Dr. Weissman, stating that in his opinion, Plaintiff's injuries to his cervical and lumbar spines as well as his need for lumbar spine surgery were causally related to the accident. (*See* Plaintiff's exhibit B; NYSCEF Doc. # 114) However, Dr. Weissman does not set forth any basis for his opinion in said affidavit. Dr. Weissman also failed to address Dr. Berkowitz's conclusion that the disc bulges were caused by degenerative changes rather than by trauma. In Migliaccio v. Miruku, a medical report by

Plaintiff's expert, which was made almost four years after the accident, contained conclusory assertions leading to the determination that the conditions noted were causally related to the accident and also did not address the findings of defendant's experts, which were supported by the patient's MRIs, that the conditions were degenerative in nature. The Court found that that the report was insufficient to raise a triable issue of fact concerning serious injury. Migliaccio v. Miruku, 56 A.D.3d 393, 394, 869 N.Y.S.2d 24 (2008). Accordingly, Plaintiff's exhibit B is insufficient to raise a triable issue of fact concerning serious injury.

Exhibit C is Dr. Hank Ross' recent affirmed orthopedic examination report, dated March 21, 2023. Similar to Dr. Weissman, Dr. Ross found a causal relationship between Plaintiff's alleged injuries and the accident, and also failed to state a basis for his opinion or address Dr. Berkowitz's conclusion that the disc bulges were caused by degenerative changes rather than by trauma. Accordingly, exhibit C is insufficient to raise a triable issue of fact concerning serious injury.

Exhibit D consists of medical records and reports of plaintiff's treating physicians. However, exhibit D is inadmissible in opposition to the motion because the medical records are uncertified. "Statements and reports by the injured party's examining and treating physicians that are unsworn or not affirmed to be true under penalty of perjury do not meet the test of competent, admissible medical evidence sufficient to defeat a motion for summary judgment." Migliaccio v. Miruku, 56 A.D.3d 393, 394, 869 N.Y.S.2d 24, 26 (1st Dep't 2008); See Smith v. Giuffre, 208 A.D.3d 609, 173 N.Y.S.3d 584 (2nd Dep't 2022); Shvartsman v. Vildman, 47 A.D.3d 700, 701, 849 N.Y.S.2d 600 (2nd Dep't 2008).

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: Plaintiff failed to raise an issue of fact under this category. At the outset, Defendants made prima facie showing that Plaintiff did not suffer a 90/180-day injury, as Plaintiff's admission in his bill of particulars was that he was only confined to bed and home for approximately two weeks. (Defendant's Exhibit F; NYSCEF Doc. No. 47) See Fernandez v. Hernandez, 151 A.D.3d 581, 582, 57 N.Y.S.3d 469 (1st Dep't 2017) (finding defendants made prima facie showing, given Plaintiff's admission in the bill of particulars that she was only confined to her bed or home for a period of

five week). Further, the Court of Appeals construed the words “substantially all” to mean “the person has been curtailed from performing his usual activities to a great extent rather than some slight curtailment.” Licari v. Elliott, 57 N.Y.2d 230, 236, 441 N.E.2d 1088, 1091 (1982). In Plaintiff’s Bill of Particulars, Plaintiff claimed to have suffered “curtailment of a great number of activities,” rather than the standard set forth by the Court of Appeals of “substantially all activities.”

Nonetheless, since Plaintiff has failed to raise a material issue of fact about whether he sustained a serious injury in the accident, he cannot have sustained a serious injury under the 90/180-day rule. *See Daniels v. Simon*, 99 A.D.3d 658, 660, 951 N.Y.S.2d 745 (2nd Dep’t 2012) Damas v. Valdes, 84 A.D.3d 87, 93, 921 N.Y.S.2d 114 (2nd Dep’t 2011). Accordingly, Plaintiff’s additional claims such as his prospective job interview at Five Guys in the coming months and being told he cannot work there because of his alleged injuries are insufficient. Zambrana v. Timothy, 95 A.D.3d 422, 423, 943 N.Y.S.2d 92 (1st Dep’t 2012) (finding that Plaintiff’s claim of curtailment from job hunting and confinement to home as insufficient to raise a 90-180 day claim without any corroborating objective medical evidence).

Plaintiff’s alleged injuries do not meet the statutory threshold under Insurance Law § 5104.

By reason of the foregoing, it is:

ORDERED that Defendants’ motion for summary judgment is granted and Plaintiff’s complaint is dismissed.

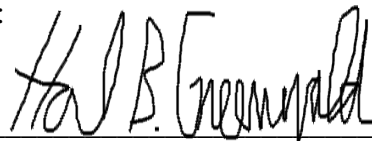
Any relief not specifically granted herein is denied.

The forgoing constitutes the decision and order of this Court.

Dated: August 29, 2023

White Plains, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that where the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

TO: Plaintiffs and Defendants via *NYSCEF*