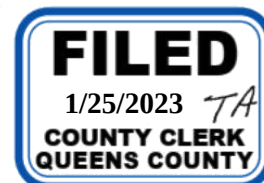


Rasic v de los Santos
2023 NY Slip Op 35142(U)
January 13, 2023
Supreme Court, Queens County
Docket Number: Index No. 702907/2018
Judge: Maurice E. Muir
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



AIDA RASIC and MIRSAD RASIC,

Plaintiffs,

-against-

NORBERTO DE LOS SANTOS BURDIER-BRITO,

Defendant.

IAS Part - 42

Index No.: 702907/2018

Motion Date: 5/12/22

Motion Cal. No. 32

Motion Seq. No. 3

The following electronically filed (“EF”) documents read on this motion by Norberto De Los Santos Burdier-Brito (“Mr. Burdier-Brito” or “defendant”) for an order: a) pursuant to CPLR 3212 granting defendant’s summary judgment and dismissing the complaint of the plaintiffs on the grounds that there are no triable issues of fact, in that the plaintiffs cannot meet the serious injury threshold requirement as mandated by Insurance Law Sections 5104(a) and 5102(d); and b) granting such other further relief as the Court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service.....	EF 45 - 69
Affirmation in Opposition-Exhibits.....	EF 77 - 96
Reply Affirmation-Exhibits.....	EF 99 - 101

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Aida Rasic (“Aida”) and Mirsad Rasic (“Mirsad”) (collectively, the “plaintiffs”) sustained in a motor vehicle accident. In particular, the plaintiffs allege that on January 19, 2018 at approximately 2:00 PM, their vehicle was stopped due to traffic on the Brooklyn Queens Expressway (“BQE”) close to Exit 25, in the county of Queens, City and State of New York when a vehicle owned and operated by Mr.

Burdier-Brito violently struck their vehicle in the rear. As a result, on February 26, 2018, the plaintiffs commenced this action; and on May 9, 2018, issue was joined. Moreover, on September 11, 2019, the court issued a preliminary conference order ("PCO"). Thereafter, on March 20, 2020, the Honorable Rudolph E. Greco, Jr granted the plaintiffs' motion for summary judgment on the issue of liability, pursuant to CPLR § 3212; and on August 6, 2020, the plaintiffs filed the Notice of Issue and Certificate of Readiness for Trial ("Note of Issue"). However, on August 25, 2020, the defendant moved to vacate the note of issue. In response, on October 22, 2020, Justice Greco issued an order, which stated the following:

It is ORDERED that plaintiffs' note of issue is NOT stricken; and it is further

ORDERED that plaintiffs shall appear for an Examination Before Trial (EBT) on or before December 3, 2020; and it is further

ORDERED that defendant to notice Independent Medical Examination (IME) doctor, within thirty (30) days of completion of plaintiffs' EBT; and it is further

ORDERED that plaintiffs shall appear for an IME within thirty (30) days of designation; and it is further

ORDERED that defendant to exchange IME report within seven (7) days of receipt of report; and it is further

ORDERED that summary judgment on the issue of liability has been granted in plaintiffs' favor, pursuant to a Short Form Order dated March 2, 2020 and entered March 12, 2020, and the EBT of defendant is deemed waived. Trial on damages only; and it is further

ORDERED that defendant's time to move for summary judgment on the basis of serious injury threshold is extended to sixty (60) days from the date of the exchange of the IME report; and it is further

ORDERED that all parties to exchange expert witness disclosure on or before April 13, 2021.

However, the defendant failed to comply with Justice Greco's order; and he failed to timely file the instant motion for summary judgment. CPLR § 3212(a) mandates that motions for summary judgment be made no later than 120 days after the filing of the note of issue. This statutory deadline is strictly enforced and can only be extended upon a showing of good cause (*Brill v. City of New York*, 2 NY3d 648 [2004]; *Milano v. George*, 17 AD3d 644 [2d Dept 2005]);

Foo-Lu Co. v. Rojas, 160 AD3d 932 [2d Dept 2018]). Whether good cause exists is a matter committed to the court's discretion and requires a showing of a "satisfactory explanation for the untimeliness - rather than simply permitting meritorious, nonprejudicial filings, however tardy." (*Id.* at 652; *Bargil Assoc., LLC v. Crites*, 173 AD3d 958 [2d Dept 2019] quoting *Bivona v. Bob's Discount Furniture of NY, LLC*, 90 AD3d 796 [2d Dept 2011]). The Court of Appeals, in *Brill v. City of New York*, 2 NY3d 648 [2004], addressed the "recurring scenario" of litigants filing late summary judgment motions, in effect "ignor[ing] statutory law, disrupt[ing] trial calendars, and undermin[ing] the goals of orderliness and efficiency in state court practice" (2 NY3d at 650, 781 NYS2d 261, 814 NE2d 431). *Brill* holds that to rein in these late motions, brought as late as shortly before trial, CPLR § 3212(a) requires that motions for summary judgment must be brought within 120 days of the filing of the note of issue or the time established by the court; where a motion is untimely, the movant must show good cause for the delay, otherwise the late motion will not be addressed (*see Isolabella v. Sapir*, 96 AD3d 427 [1st Dept 2012]). *Brill* draws a bright line based on the two elements of CPLR § 3212(a): a) the statutorily imposed or court-imposed deadlines for filing summary judgment motions; and b) the showing of good cause by a late movant in order for its motion to be considered. In *Brill*, the Court of Appeals indicated that late-filed summary judgment motions are "another example of sloppy practice threatening our judicial system" (2 NY3d at 652, 781 NYS2d 261, 814 NE2d 431, emphasis added), and pointed to its earlier decision, *Kihl v. Pfeffer*, 94 NY2d 118 [1999], which affirmed dismissal of the complaint because the plaintiff failed to respond to a court order within the court-ordered time frame. *Brill* reiterates *Kihl's* statement that, "[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity" (2 NY3d at 652-653, 781 NYS2d 261, 814 NE2d 431) quoting *Kihl v. Pfeffer*, 94 NY2d at 123).

Here, the plaintiff correctly argues that "... the defendant completely ignored the Court's order by not exchanging said IME reports by March 31, 2021; by not exchanging its expert witness by April 13, 2021, and by not moving for Summary Judgment sixty (60) days from March 31, 2021." According to counsel's uncontroverted affirmation, the plaintiffs' IME were completed on March 24, 2021. As a result, the parties were required to exchange the IME reports seven (7) days thereafter, i.e., March 31, 2021. Thereafter, the defendant was supposed to file the instant motion for summary judgment on or before May 31, 2021. However, the

defendant did not file the instant motion for summary judgment until June 29, 2021, approximately one month late. Even worst, the defendant failed to address his untimely motion in his reply papers. As such, denial of the instant motion is warranted. (*Bargil Assoc., LLC v. Crites*, 173 AD3d 958 [2d Dept 2019]).

Accordingly, it is hereby

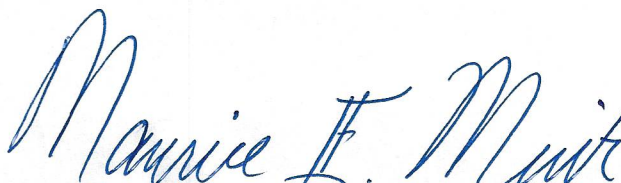
ORDERED that defendant's motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that plaintiff shall serve, via certified mail and NYSCEF, a copy of this Order with Notice of Entry upon the defendant on or before February 28, 2023.

The foregoing constitutes the decision and order of the court.

Dated: January 13, 2023

Long Island City, New York


MAURICE E. MUIR, J.S.C.

