

Villa v Louis

2024 NY Slip Op 34944(U)

May 29, 2024

Supreme Court, Bronx County

Docket Number: Index No. 25149/2020E

Judge: Patsy Gouldborne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IAS PART 13

HON. PATSY GOULDBORNE, J.S.C.

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GUSTAVO GARCIA VILLA,

INDEX NO. 25149/2020E **C**

Plaintiff,

- against -

E#002

WILFRID LOUIS, KHALED ELSAYED GADOU and
MEDALLION MAINTENANCE INC.,

Defendants.

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The following pages were read on this motion. Noticed on February 4, 2023, and duly submitted as
(Seq. #2) on the motion calendar for **SUMMARY JUDGMENT**.

	Pages Numbered	
Notice of Motion – Affirmation and Exhibits	NYSCEF Doc No(s).	32-42
Affirmation in Opposition and Exhibits	NYSCEF Doc No(s).	48-71
Reply Affirmation	NYSCEF Doc No(s).	72

Upon the foregoing papers the Notice of Motion, (Seq. #2), is hereby decided in accordance with the
annexed Decision and Order.

This constitutes the Decision and Order of this Court.

Dated: May 29, 2024
Bronx, New York

HON. PATSY GOULDBORNE, J.S.C.

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

NYSCEF SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 13

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GUSTAVO GARCIA VILLA,

Index No. 25149/2020E

Plaintiff,

-against-

Hon. PATSY GOULDBORNE

Justice Supreme Court

WILFRID LOUIS, KHALED ELSAYED GADOU,
and MEDALLION MAINTENANCE, INC.,
Defendants.

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The following papers were read on this motion (Seq. No. 2) for **Summary Judgment -Threshold** submitted on July 31, 2023.

Notice of Motion – Affirmation and Exhibits Annexed	NYSCEF Doc. # 32-42
Affirmation in Opposition and Exhibits Annexed	NYSCEF Doc. # 48-71
Affirmation in Reply	NYSCEF Doc. # 72

Upon the foregoing papers, it is ordered that this motion (Seq. 2) by Defendants, seeking summary judgment and dismissing Plaintiff’s complaint on the grounds that Plaintiff has not sustained a “serious injury” pursuant to the provisions of Insurance Law § 5102 (d). After due deliberation, the motion is decided in accordance herewith.

Plaintiff alleges that as a result of the motor vehicle accident which occurred on October 14, 2019, he sustained injuries to his cervical spine, lumbar spine, left shoulder, right knee, right knee lacerations, and headaches. Plaintiff alleges that he sustained a “serious injury” under the “fracture”, “permanent loss of use,” “permanent consequential limitation,” “significant limitation,” and/or “90/180-day” categories of the Insurance Law.

In support of the motion, Defendants submit, inter alia, Plaintiff’s deposition transcript, the Verified Bill of Particulars, the affirmed orthopedic report of John H. Buckner, M.D, and the affirmed report of Scott A. Springer, M.D.

As an initial matter, with respect to Plaintiffs alleged headache injury, the Court of Appeals and First Department have held that headaches do not qualify as a "serious injury" (see *Licari v Elliot*, 57 NY2d 230, 239 [1982] ["we do not believe the subjective quality of an ordinary headache falls within the objective verbal definition of serious injury; *Ceruti v Abernathy*, 285 AD2d 386 [1st Dept 2001] ["headaches-do not constitute 'permanent loss of use of a body organ member, function or system' or significant limitation of use of a body function or system under Insurance Law §5102(d)"]). Therefore, the Court need not address this alleged injury as noted in the bill of particulars.

Dr. Buckner examined the Plaintiff on May 2, 2022, and found with respect to the head no visible asymmetries that would suggest major skull trauma; with respect to the cervical spine, lumbar spine, left shoulder, or right knee he did not find objective evidence of injury. Dr. Buckner states, amongst other things, that “the only way of determining a causal relationship of joint motion loss is to have measured it pre and post event as is common practice in joint replacement surgery. For any given individual, the best measure of loss of joint motion is to compare one side with the other. Comparison with a table of "normal" is medically meaningless.” While Dr. Buckner did not compare plaintiff’s range of motion values to normal values, he

Dr. Buckner examined plaintiff's cervical spine, lumbar spine, left shoulder, and right knee and opined that there was no objective evidence of injury after administering diagnostic tests resulting in negative findings, and states the plaintiff could work without restrictions, (*Rodriguez v. Konate*, 161 A.D.3d 565, 566 [1st Dept 2018]).

On October 29, 2019, Plaintiff underwent an MRI examination of his left shoulder, cervical spine, lumbar spine, right knee, and brain. On October 3, 2020, Dr. Springer reviewed the MRI films and found no posttraumatic changes related to the subject accident.

Defendant's submission of Dr. Buckner's report establishes, *prima facie*, that the Plaintiff did not sustain a serious injury under the "fracture", "significant limitation", or "permanent consequential limitation" of the cervical spine, lumbar spine, left shoulder, and right knee. Dr. Buckner's finds no objective evidence of injury and negative diagnostic testing. *Rodriguez v Konate*, 161 AD3D 565 [1st Dept. 2018]. Additionally, Dr. Springer's states the review of the Plaintiff's lumbar MRI films revealed degenerative change and disc bulges, the cervical MRI files revealed straightening of the normal cervical lordosis, of which he opines it could be due to positioning, disc bulge, posterior osteophytes.

Dr. Springer's review of MRI films of the brain MRI was unremarkable; the right knee MRI film revealed, amongst other things, tendinosis, degenerative changes, chondromalacia - medial ridge of the patella with associated bone marrow edema; moderate joint effusion, chronic tearing, anterior horn of the lateral meniscus with a parameniscal cyst, fraying - posterior horn of the lateral meniscus; small popliteal cyst, and finds no definite posttraumatic changes causally related to the accident. Dr. Springer's review of the left shoulder MRI films revealed "hypertrophic change and narrowing, acromioclavicular joint, moderate fluid, subacromial/subdeltoid bursa, lateral down sloping acromial process, tendinosis, supraspinatus, infraspinatus and subscapularis tendons, Low-grade interstitial tear, infraspinatus tendon, mild narrowing, glenohumeral joint, small joint effusion, SLAP tear with fraying, superior labrum". With respect to the cervical spine, lumbar spine, left shoulder, and right knee, Dr. Springer opines there is no posttraumatic changes causally related to the accident.

Defendant's submissions establishes, *prima facie*, that Plaintiff did not sustain a "significant limitation" or "permanent consequential limitation" of his cervical spine, lumbar spine, or left shoulder (*Velazquez v City of New York*, 200 AD3d 547, 548 [1st Dept 2021]), shifting the burden of proof on the issue of causation as to these claimed injuries (*see Feliz v Fragosa*, 85 AD3d 417 [1st Dept 2011]).

In opposition, Plaintiff submits, inter alia, a supplemental Bill of Particulars; counsel's affirmation; the affirmation and treatment records of Joseph Raia; the affirmation of Narayan B. Paruchuri, M.D.; M.D.; the affirmed treatment reports of Stella Mansukhani; the affirmation Bradley Wasserman, M.D.; affirmation of Barry Katzman, M.D.; Plaintiff's affidavit and deposition transcript; medical records; and physical therapy records.

On October 16, 2019, Dr. Raia examined the Plaintiff and found decreased ranges of motion of the cervical spine, lumbar spine, left shoulder, and right knee. Dr. Raia found a sprain and a contusion of the right knee along with sprains of the cervical and lumbar spine. Dr. Raia concluded that the Plaintiff's injuries were causally related to the subject accident.

Dr. Mansukhani began treating the Plaintiff on November 7, 2019, at which time restricted range of motion of the cervical spine, lumbar spine, left shoulder, and right knee were revealed. Dr. Mansukhani determined that the Plaintiff's complaints were causally related to the subject accident. Dr. Mansukhani found that the Plaintiff had continued range of motion limitations on December 5, 2019, and February 11, 2020. On December 5, 2019, Dr. Mansukhani, found the Plaintiff's cervical spine had improved.

accident. (see *Streeter v Stanley*, 128 AD3d 477 [1st Dept 2015]).

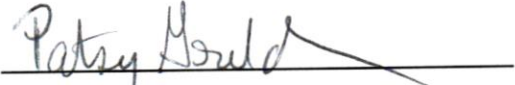
With respect to Plaintiff's claim of a "permanent loss of use," there is no evidence that Plaintiff suffered a "total loss of use" of any body part. Therefore, Plaintiff's claims under the "permanent loss of use" category are dismissed (*Riollano v Leavey*, 173 AD3d 494 [1st Dept 2019], citing *Oberly v Bangs Ambulance*, 96 NY2d 295, 299 [2001]).

Accordingly, it is hereby

ORDERED that the motion (Seq. 2) by Defendants for an Order seeking summary judgment and dismissing Plaintiff's complaint, on the grounds that Plaintiff has not sustained a "serious injury" pursuant to the provisions of Insurance Law § 5102 (d) is **GRANTED to the extent** that Plaintiff's claims of "serious injury" regarding his cervical spine, lumbar spine, and left shoulder, as well as claims under the "permanent loss of use," category of injury are dismissed, and the motion is otherwise **DENIED**.

This constitutes the Decision and Order of this Court.

Dated: May 29, 2024


Hon. PATSY GOULDBORNE, J.S.C.

1. CHECK ONE.....	<input type="checkbox"/> CASE DISPOSED IN ITS ENTIRETY	<input checked="" type="checkbox"/> CASE STILL ACTIVE
2. MOTION IS.....	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
3. CHECK IF APPROPRIATE.....	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> SCHEDULE APPEARANCE