

Brown v QLR Five LLC

2024 NY Slip Op 34964(U)

September 30, 2024

Supreme Court, Bronx County

Docket Number: Index No. 27282/2020E

Judge: Patsy Gouldborne

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

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ANGELIQUE J. BROWN and DAJUAN D.
BEAUFORD,

Index No. 27282/2020E

Plaintiff,

-against-

Hon. PATSY GOULDBORNE

QLR FIVE LLC,

Justice Supreme Court

Defendants.

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The following papers were read on this motion (Seq No. 3) for **summary judgment** submitted on September 23, 2023.

Notice of Motion – Affirmation and Exhibits Annexed	NYSCEF Doc. # 50 – 58
Affirmation in Opposition and Exhibits Annexed	NYSCEF Doc. # 62 – 68

Upon the foregoing papers, the defendant QLR Five LLC ("Defendant") moves for an order granting it summary judgment and dismissal of plaintiff Angelique J. Brown's ("Plaintiff") complaint¹ on the grounds that Plaintiff has not sustained a "serious injury" within the meaning of Insurance Law § 5102 (d). Plaintiff opposes the motion.

Plaintiff's complaint seeks compensation for alleged personal injuries arising out of a motor vehicle accident on June 6, 2019, wherein a vehicle owned by Defendant struck Plaintiff's vehicle from the rear on the Cross Bronx Expressway at Jerome Avenue. Plaintiff alleges that as a result of the incident, she sustained injuries to her cervical spine, lumbar spine, left shoulder, and right shoulder. Plaintiff alleges that she sustained a "serious injury" under the "permanent consequential limitation of use of a body organ or member," "significant limitation of use of a body function or system," and/or "90/180-day" categories of the Insurance Law.

In support of the motion, Defendant submits, *inter alia*, Plaintiff's deposition transcript, and the affirmed orthopedic report of Salvatore Corso, M.D.

Dr. Corso conducted an orthopedic examination of Plaintiff on April 15, 2022, in which he found normal range of motion of the cervical spine, lumbar spine, and right shoulders, and near normal range of motion as to the left shoulder, with negative diagnostic testing. Dr. Corso found

¹ Defendant's submissions do not address Plaintiff Dajuan D. Beauford's claims.

that all of Plaintiff's claimed injuries had resolved and that no significant or permanent injury resulted from the accident. Dr. Corso did not opine as to causation of any claimed injuries.

Defendant submits sufficient evidence to establish, *prima facie*, that Plaintiff did not sustain a "serious injury" under the "permanent consequential limitation," or "significant limitation," categories with respect to injuries of her cervical spine, lumbar spine, left shoulder, and right shoulder as Dr. Corso finds no "objective limitations or positive findings" (*Diaz v Vivar-Martinez*, 192 AD3d 578 [1st Dept 2021]; *see also Velazquez v City of New York*, 200 AD3d 547, 548 [1st Dept 2021]). Contrary to Plaintiff's assertions in opposition, Dr. Corso's finding of minor limitations as to the left shoulder is insufficient to defeat Defendant's initial burden to show Plaintiff did not sustain either a significant or permanent injury as to this body part (*see Bianchi v Mason*, 179 AD3d 567 [1st Dept 2020]; *see also Olivare v Tomlin*, 187 AD3d 642 [1st Dept 2020]). Further, Defendant's physician was not required to review Plaintiff's medical records, as Dr. Corso relied on objective tests to support his conclusions, sufficiently meeting his burden to show these conditions do not constitute "serious injuries" (*see Brand v Engelista*, 103 AD3d 539 [1st Dept 2013]).

With respect to Plaintiff's "90/180" claim, Defendant submits evidence to establish, *prima facie*, that Plaintiff did not sustain injuries sufficient to maintain this claim. Plaintiff's bill of particulars fails to allege that Plaintiff was confined for the minimum duration as required by the statute (*see Tejada v LKQ Hunts Point Parts*, 166 AD3d 436 [1st Dept 2018]). Further, Plaintiff's own deposition testimony acknowledges she was only out of work "for a few days" after the accident (*see Streety v Toure*, 173 AD3d 462, 463 [1st Dept 2019]). Contrary to Plaintiff's argument in opposition, the unsigned deposition transcript is admissible as plaintiff's own admission as the transcript is certified as accurate by the court reporter (*Sing v Actors Equity Holding Corp.*, 89 AD3d 488 [1st Dept 2011]).

In opposition to the motion, Plaintiff submits, *inter alia*, the sworn orthopedic examination of Mark Heyligers, DC, PLLC, the affirmation and MRI reports of Samuel Mayerfield, M.D., and the affirmation and MRI report of Mark J. Decker, M.D.

Dr. Mayerfield affirms the findings of his MRI reports. Review of a cervical spine MRI performed on August 5, 2019 revealed posterior central disc herniation at C5-C6. Review of a lumbar spine MRI performed on August 22, 2019 shows posterior central disc herniation at L3-L4, L4-L5, and L5-S1.

Dr. Decker affirms the findings of his MRI report performed on August 22, 2019 of the left shoulder, revealing AC joint hypertrophy and capsular thickening, which can be seen with adhesive capsulitis.

Dr. Heyligers performed an orthopedic examination of Plaintiff on March 15, 2023, finding significant range of motion limitations to the cervical spine and lumbar spine. Based on his examination, Dr. Heyligers causally relates Plaintiff's injuries of her "neck, and lower back" to the subject accident.

Plaintiff fails to raise an issue of fact as to whether she sustained a "significant limitation" or "permanent consequential limitation" with respect to claimed injuries to her right and left shoulders, as Dr. Heyligers does not examine these body parts (*Lopez v Morel-Ulla*, 144 AD3d 504, 505 [1st Dept 2016] ["Absent limitations, there is no serious injury"]), and Dr. Decker's MRI report is insufficient alone to show any "objective limitations" as to the left shoulder injury (*see Burgess v Avignon Taxi LLC*, 211 AD3d 522 [1st Dept 2022]).

Notwithstanding the foregoing, Plaintiff submissions are sufficient to raise an issue of fact as to whether Plaintiff sustained a "significant limitation" or "permanent consequential limitation" as to her cervical and lumbar spine, as Dr. Heyligers finds significant loss of range of motion in these body parts (*see Newby v Morales*, 220 AD3d 422 [1st Dept 2023]). It is noted that, if a jury determines that Plaintiff sustained a "serious injury," Plaintiff may recover for all injuries causally related to the accident, even those not meeting the serious injury threshold (*Pouchie v Pichardo*, 173 AD3d 643 [1st Dept 2019]).

With respect to her "90/180" claim, Plaintiff fails to submit any admissible evidence to raise an issue of fact, as Plaintiff's own testimony and pleadings are insufficient to show whether she was confined for the relevant period, and her submissions in opposition do not address this claim (*see Curet*, 172 AD3d 634; *see also Rodriguez v Moss*, 224 AD3d 418, 419 [1st Dept 2024]).

Accordingly, it is hereby

ORDERED that the motion (Seq. 3) by Defendant QLR FIVE LLC, for an order granting summary judgment and dismissing Plaintiff's complaint on the grounds that Plaintiff has not sustained a "serious injury" pursuant to Insurance Law § 5102 (d) is **GRANTED to the extent** that Plaintiff Angelique J. Brown's claims of "serious injury" under the "permanent consequential limitation," or "significant limitation" categories for claimed injuries of her bilateral shoulders are

dismissed, and claims of “serious injury” under the “90/180” category are dismissed, and further, the motion is otherwise **DENIED**.

This constitutes the Decision and Order of this Court.

Dated: September 30, 2024

Hon. *Patsy Gould*
PATSY GOULDBORNE, J.S.C.

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