

Brooks v NYU Langone Hosps.

2025 NY Slip Op 31965(U)

May 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 513837/2023

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 513837/2023
Motion Date: May 28, 2025
Mot. Seq. No.: 3

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CHARLES BROOKS,

Plaintiff,

-against-

DECISION/ORDER

NYU LANGONE HOSPITALS and JORGE A.
CALAMA-ANDRADB, in his official job capacity as a
NYU LANGONE HOSPITALS Emergency Medical-
Technician,

Defendants.
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The following papers, which are e-filed with NYCEF as Document Numbers 37-51, 54-65, 69-73, were read on this motion:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the defendants move for an order pursuant to CPLR S 3212 granting then summary judgment dismissing plaintiff's complaint pursuant to Vehicle & Traffic Law §1104 and on the ground that the plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102(d).

That branch of defendants' motion for summary judgment pursuant to Vehicle & Traffic Law § 1104 is denied. The evidence submitted on the motion, construed in the light most favorable to the plaintiff, demonstrates that at the time of the accident, the plaintiff was operating a motor vehicle and was stopped in traffic in the lane directly adjacent to the double yellow line separating opposing lanes of traffic. Defendant Jorge A. Calama-Andradb was operating an ambulance with its lights and sirens activated, responding to a qualified emergency. Upon encountering stopped vehicles in front of him, the ambulance operator crossed the double yellow line into the opposing lane of traffic and, while attempting to re-enter the original lane, the ambulance collided with plaintiff's vehicle.

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Pursuant to Vehicle and Traffic Law § 1104(e), the operator of an authorized emergency vehicle engaged in an emergency operation is exempt from certain rules of the road but may be held liable where his or her conduct demonstrates a “reckless disregard for the safety of others.” This standard is more stringent than ordinary negligence and requires evidence that the operator acted with conscious indifference to a known or obvious risk (see *Saarinen v Kerr*, 84 NY2d 494, 501). Thus, to establish their entitlement to judgment, the defendants were required to demonstrate as a matter of law that the operator’s actions did not rise to the level of reckless disregard (see *Perkins v. City of Buffalo*, 151 A.D.3d 1941, 1942, 57 N.Y.S.3d 866, 867; *Robinson v. Cnty. of Suffolk*, 219 A.D.3d 1542, 1543, 196 N.Y.S.3d 543, 545).

Here, viewing the evidence in the light most favorable to the plaintiff, the defendants did not demonstrate as a matter of law that the ambulance operator acted without reckless disregard. Although the ambulance was operating under emergency conditions, the fact that the operator chose to re-enter a lane of traffic from the oncoming lane, in close proximity to stopped vehicles, raises triable issues as to whether such maneuver was performed with due caution or constituted a gross deviation from reasonable conduct (see *Robinson v. Cnty. of Suffolk*, 219 A.D.3d 1542, 1543–44, 196 N.Y.S.3d 543, 54, *Bourdierd v. City of Yonkers*, 213 A.D.3d 899, 901, 184 N.Y.S.3d 808; *Thompson v. City of New York*, 210 A.D.3d at 1034, 179 N.Y.S.3d 682).

That branch of defendants’ motion for summary judgment dismissing plaintiff’s complaint on the ground that he did not suffer a serious injury within the meaning of Insurance Law 5102(d) is granted. In his Verified Bill of Particulars, the plaintiff claim that he suffered injuries to the cervical and thoracic spine, more particularly, cervical and thoracic disc herniations at C2-3, C3-4, C4-5t C5-6, C6-7, and T1-2; cervical and thoracic disc bulges at C7-T1, T2-3 and T6-1; cervical radiculopathy; cervical and thoracic nerve damage, sprain/strain and loss of functional use.

In support of the motion, through the submission of Dr. Freeman’s IME report concerning his orthopedic examination of the plaintiff on October 17, 2024, the defendants demonstrated, prima facie, that the plaintiff did not suffer serious injury of the cervical or

thoracic spine under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (see *Petric v. Retsina Cab Corp.*, 235 A.D.3d 672, 673, 226 N.Y.S.3d 337, 338; *Staff v. Yshua*, 59 A.D.3d 614, 874 N.Y.S.2d 180). Through the submission of plaintiff's deposition testimony, the defendants also demonstrated, prima facie, that the plaintiff did not suffer a serious injury under the 90/180-day category of Insurance Law § 5102(d). In this regard, the plaintiff testified that he was not confined to his bed or home for any period of time after the accident, that he returned to his full time job as substance abuse counselor after a two-to-three-day break immediately after the accident, and that he did not miss any time from work as an usher at Radio City Music Hall after the accident.

In opposition, the plaintiff failed to raise a triable issue of fact. The records of Atlantic Orthopedics and Sports Medicine that plaintiff submitted were not in admissible form and were not considered. Although these records were accompanied by a certification, the certification did not lay a foundation for the admission of the records as business records under CPLR 4545. Further, the certification only refers to 4 unknown pages of the various records submitted.

Even if the Court were to consider the various medical reports that Dr. Freeman listed in his reports, as plaintiff contends is permissible (see *Ayzen v. Melendez*, 299 A.D.2d 381, 749 N.Y.S.2d 445), none of these records are based on a recent examination of the plaintiff. To raise an issue of fact as to the existence of a serious injury, the medical evidence presented must include the results of a recent examination (see *Bent v. Jackson*, 15 A.D.2d 46 788; *Thomson v. Abassi*, 15 AD3d 95; *Grossman v. Wright*, 268 A.D.2d 79).

The court has considered plaintiff's remaining arguments in opposition to the motion and find them to be unavailing.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment dismissing plaintiff's complaint pursuant to Vehicle & Traffic Law S 1104 is **DENIED**, and it is further

ORDRED that defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff did not suffer a serious injury within the meaning of Insurance Law S 5102(d) is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: May 29, 2025.

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PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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