

Joachim v American Materials Lands

2025 NY Slip Op 32218(U)

June 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 529876/2022

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 12th day of June, 2025.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

-----X

JESSIE JOACHIM,

Plaintiff,

Index No. 529876/2022

-against-

DECISION & ORDER

(Mot. Seq. No. 3)

AMERICAN MATERIALS LANDS, JAMES JOSEPH
NEWMAN and S.S. BARTON-HOSSANAH,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affirmation/Exhibits.....	46-66
Memorandum in Opposition/Exhibits.....	71-78
Affirmation in Reply/Exhibit.....	84,85

Defendants American Materials Lands (“AMI”), James Joseph Newman (“Newman”) and S.S. Barton-Hossanah (“Barton-Hossanah”) (collectively, “Defendants”) move (Motion Seq No. #3), pursuant to CPLR 3212, for an order granting them summary judgment dismissing plaintiffs complaints on the basis that Plaintiff Jessie Joachim (“Plaintiff”) did not sustain a “serious injury” under Insurance Law §§ 5102 (d) and 5104 (a).

This action arises from a motor vehicle accident that occurred on June 2, 2021, at the intersection of Avenue P and East 2nd Street in Brooklyn, New York (the “subject accident”). Plaintiff alleges that she was a passenger in Barton-Hosannah’s vehicle when it was rear-ended by

Newman. As a result of this accident, Plaintiff seeks to recover damages for injuries to her cervical and lumbar spine. In her Bill of Particulars, Plaintiff alleges that she:

“sustained a permanent injury which has resulted in the loss of use of a bodily member or bodily organ function or system and/or medical determined injury or impairment of nonpermanent nature which prevented the plaintiff from performing substantially all of the material acts which constituted said plaintiffs [*sic*] usual and customary daily activities [*sic*] for not less than ninety days during the first 180 days immediately following the occurrence of the injury or impairment” (NYSCEF Doc No. 50).¹

In support of its motion, Defendants contend that the injuries Plaintiff sustained were from a prior motor vehicle accident in 2019, which resulted in a lawsuit. In support, Defendants cite to Plaintiff’s medical records documenting treatment received as a result of the 2019 accident. Defendants’ independent medical examiner Dr. Nicholas Post, a neurologist, examined Plaintiff on September 25, 2023, four years after the first accident and two years after the second accident. While Dr. Post did find decreased ranges of motion in Plaintiff’s cervical and lumbar spine, he concluded that this was “attributed to suboptimal effort and complaints of discomfort at the end points of movement.” Dr. Post also opined that Plaintiff’s injuries are “not associated with a traumatic” injury from the subject accident and the MRIs’ findings are “consistent with a degenerative process” (NYSCEF Doc No. 52). Dr. Post further opined that there is no “objective evidence of a neurological injury or permanent impairment arising from the [subject] accident that would limit her ability to work and perform her activities of daily living” (*id.*). In addition, Defendants argue that Plaintiff testified that she missed only a few days of work and that she had no restrictions when working her two jobs. Moreover, Defendants assert that there was an eight-month gap in treatment.

In opposition, Plaintiff argues that the motion must be denied based on procedural and substantive grounds. Plaintiff claims that the records submitted by the Defendants are incomplete and insufficient, because the IME report does not explain why Plaintiff’s injuries are consistent with a degenerative process or why the Plaintiff was asymptomatic prior to the subject accident. Thus, Plaintiff contends that Defendants failed to meet their burden of proof for summary judgment. Plaintiff notes that Defendants’ expert Dr. Post found limited ranges of motion using a

¹ Plaintiff did not assert that she sustained an injury under the permanent consequential limitation or significant limitation of use categories in her Bill of Particulars. Nonetheless, in their motion, Defendants argue that Plaintiff’s alleged injuries are minor, non-permanent and are without significant limitation.

goniometer. To the extent Dr. Post contends Plaintiff is self-limiting, Plaintiff argues that this raises a credibility issue. Plaintiff further argues that Dr. Post fails to explain why Plaintiff was asymptomatic prior to the subject accident. In addition, Plaintiff argues that her medical records establish that she sustained disc herniations and bulges and loss of range of motion, as measured by her treating physicians, due to the subject accident. While Plaintiff testified she only took a couple of days off work, she asserts that she was instructed to avoid bending at work. Plaintiff further asserts that the pain associated with her injuries continue to interfere with her life on a daily basis, such as experiencing difficulties sitting or standing for long periods of time. In support of her opposition, Plaintiff included a report from Dr. Irving Friedman, who, upon examination of Plaintiff in November 2023, found limited range of motion and opined that Plaintiff has a significant and painful disability directly and causally related to the subject accident. Dr. Friedman also determined that Plaintiff has recovered from the injuries sustained in the prior accident and was asymptomatic prior to the subject accident. Plaintiff further asserts that she underwent two surgeries by Dr. Arden M. Kaisman. With respect to the prior car accident, Plaintiff avers that she treated for and recovered from her prior neck and back injuries. Plaintiff asserts that the reason for the gap in treatment is that her no-fault benefits ended, but she continues to treat her injuries with over-the-counter pain medication and a heating pad.

In their reply, Defendants argue that the Plaintiff has not shown proof that she sustained a serious injury or sustained a new injury from the subject accident. According to Defendants, Plaintiff's counsel ignored the Plaintiff's testimony, which contradicts the medical records. Defendants further argue that Dr. Friedman did not explain how Plaintiff had the exact findings on a pre-accident MRI that she has on the post-accident MRI. Though Plaintiff asserts that she was asymptomatic at the time of the accident, Defendants point out that in the action related to the 2019 accident, Plaintiff submitted a Bill of Particulars in October 2021 alleging the same exact injuries and symptoms and relates them to the 2019 accident. On the one hand, Plaintiff argued that the injuries from 2019 were permanent. On the other hand, Plaintiff's doctor, Dr. Friedman, contends in this action that she was asymptomatic prior to the subject accident. Defendants further argue that no medical records confirm that Plaintiff recovered from the injuries sustained in the previous accident in October 2019. Though Plaintiff states in her affidavit that she never previously injured her neck and never treated for her mild back injury from 2019, Defendants maintain that this has been disproven by her medical records. With respect to the gap in treatment, Defendants contend

that Plaintiff testified that she did not continue treatment because of having to travel long distances for treatment, and she had to work and help her kids. Moreover, Defendants argue that Plaintiff fails to address the range of motion testing that was done prior to the subject accident that show Plaintiff had the same limitations. In support, Defendants cite to Dr. Howell's records, reflecting that he measured Plaintiff's range of motion in 2019 and in 2021 and found that Plaintiff lumbar spine extension had actually improved in 2021. Defendants further assert that Plaintiff never underwent surgery for either of her alleged injuries.² In fact, Defendants aver that Dr. Kaisman is not a spinal surgeon; instead, he is a certified anesthesiologist.

Whether a claimed injury falls within the statutory definition of "serious injury" is a question of law for the Court (*Licari v Elliot*, 57 NY2d 230 [1982]). The movant bears the initial burden of establishing, by the submission of evidentiary proof in admissible form, a prima facie case that a party has not suffered a serious injury proximately resulting from the subject motor vehicle accident (*Toure v Car Sys., Inc.*, 98 NY2d 345 [2002]; *Gaddy v Eycler*, 79 NY2d 955 [1992]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [2016]). However, where the movant has made a showing that a party has not suffered a serious injury as a matter of law, the burden shifts to the opposing party to submit evidence in admissible form sufficient to create a material issue of fact warranting a trial (*Franchini v Palmieri*, 1 NY3d 536 [2003]; *Grasso v Angerami*, 79 NY2d 813 [1991]). Where defendants proffer evidence indicating that a plaintiff's alleged injuries were related to a preexisting condition, the plaintiff must come forward with "objective medical evidence distinguishing plaintiff's preexisting condition from the injuries claimed to have been caused by [the] accident" (*Falkner v Hand*, 61 AD3d 1153, 1154 [3d Dept 2009]).

The Court finds that Defendants have established, through competent medical evidence, that Plaintiff's alleged injuries neither constituted a serious injury under either the permanent consequential or significant limitation of use categories nor were they causally related to the subject accident.

² While Defendants argue that Plaintiff did not undergo surgery, their own expert Dr. Post noted that he reviewed two reports of a cervical discectomy with annuloplasty (dated November 30, 2022) and a lumbar discectomy with annuloplasty (dated December 7, 2022) (NYSCEF Doc No. 52). These reports were not submitted by either party for the Court's review.

In opposition, Plaintiff has failed to present sufficient evidence to raise a triable issue of fact. It is undisputed that Plaintiff had pre-existing cervical and lumbar spine injuries, as documented in medical records following the 2019 motor vehicle accident. Notably, Dr. Howell evaluated Plaintiff following both the 2019 and 2021 accidents and documented identical injuries in his medical reports. Although Dr. Friedman opines that Plaintiff was asymptomatic prior to the subject accident, his conclusion appears to rely solely on Plaintiff's own statements, rather than on objective medical findings. Plaintiff eventually discontinued treatment, allegedly due to the provider's location and issues with no-fault benefits. However, her treating physician, Dr. Howell, provided no explanation for this treatment gap, nor did he indicate whether her current symptoms were related to the subject accident. According to Plaintiff's own testimony, she ceased treatment for the alleged injuries in December 2021 and has not resumed treatment since (Plaintiff tr at 49, lines 4-7). Moreover, Dr. Friedman's post-accident evaluation merely states that Plaintiff is symptomatic but fails to provide a clear medical explanation or objective basis linking her symptoms to the 2021 accident. Neither Dr. Friedman nor Dr. Howell stated that the subject accident aggravated any pre-existing injuries, nor did they conclusively address whether Plaintiff was asymptomatic prior to the incident.

The Court will now address the 90/180 category of Plaintiff's claim. Under this category, a "serious injury" is defined as a plaintiff's inability to "perform substantially all of the material acts which constitute [his or her] usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the date of the [accident]" (Insurance Law 5102 [d]). Therefore, a plaintiff's current condition has no bearing on whether he was unable to carry out her normal and customary activities during the statutory period. Moreover, a plaintiff's self-serving statement or testimony claiming an inability to engage in customary daily activities will not suffice (*Ryan v Xuda*, 243 AD2d 457, 457-458 [2d Dept 1997]). Instead, there must be objective evidence of a medically imposed limitation (*id.*).

Through Plaintiff's deposition testimony and Bill of Particulars, Defendants have established prima facie entitlement to dismissal of the 90/180-day claim. It is undisputed that Plaintiff was confined to her bed or home for less than 90 days.³ In addition, Plaintiff testified that she missed a few days of work (Plaintiff tr at 52, lines 16-23). In opposition, Plaintiff failed to

³ In the Plaintiff's Bill of Particulars, she avers that she was confined to her bed for one week and to her home for three weeks (NYSEF Doc. 50, ¶¶ 8-9).

raise an issue of fact. Plaintiff's subjective description of her injuries is insufficient in the absence of medical evidence indicating that she was unable to perform substantially all of her daily activities for not less than 90 out of 180 days following the accident (*Muzashvili v Vicente*, 16 Misc 3d 1140[A] [Sup Ct, Kings County 2007], *aff'd* 59 AD3d 413 [2d Dept 2009]).

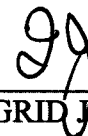
Therefore, the Court finds that Plaintiff has failed to raise a triable issue of fact as to whether she sustained a serious injury as defined by Insurance Law § 5102(d). Defendants' motion for summary judgment is granted, and the complaint is dismissed in its entirety.

Accordingly,

ORDERED that Defendants' motion for summary judgment (Mot. Seq. No. 3) is granted.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice