Biestek v Rahuman

2025 NY Slip Op 34289(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 150277/2021

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES **PART** 22

Justice

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BRETT BIESTEK, LESLIE SCHAEFER,

Plaintiff,

- v -

MOHAMMED RAHUMAN, MOHAMMED MUZAMMIL, REMI GAY, MAMADOU DIALLO

Defendant.

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INDEX NO. 150277/2021

MOTION DATE 05/07/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 102, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that the motion by Defendant Mamadou Diallo (Diallo) for an Order granting summary judgment in his favor and dismissing the plaintiffs' complaints for failure to meet the serious injury threshold requirement pursuant to section 5102 (d) of the New York Insurance Law (Insurance Law) is decided as follows.

This is a personal injury action involving July 12. 2020 three-vehicle accident.Plaintiffs were passengers in the lead vehicle owned and operated by defendants Muhammed Rahuman and Mohammed Muzammail. Diallo's vehicle, the rear-most vehicle, struck the rear of the middle vehicle, driven by defendant Remi Gay, and propelled Gay's vehicle into the vehicle in which plaintiffs were passengers.

By order, dated November 9, 2023, the court granted plaintiffs' motion for partial summary judgment, on the issue of liability, in favor of plaintiffs and against Diallo.

Diallo moves for dismissal of the complaint, alleging that neither plaintiff has proven that they have suffered serious injuries as a direct result of the accident. Plaintiffs' Bill of Particulars alleges that as a result of the collision, plaintiffs suffered from the following examples of serious injury: permanent loss of a use of a body organ, member, function or system; permanent consequential limitation of the use of a body organ or member; significant limitation of the use of a body function or system; and a medically determined injury or impairment of a non-permanent

nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities not less than ninety days during the one hundred and eighty days following the occurrence of the injury or impairment.

Diallo submits the following evidence with his motion: the deposition testimony of plaintiffs; the report from Dr. Pierce Ferriter, an orthopedist who examined Brain Biestek and Leslie Schaefer on June 20, 2022; and the report from Dr. Scott Springer, a radiologist who reviewed the July 24, 2020 brain MRI of Schaefer on March 20, 2023.

In his deposition, Biestek stated that on the day of the accident, he took a taxi home instead of going in an ambulance to the hospital. He later took up physical therapy with Dr. Edwin Perez, for about six months. He claimed to have discontinued the therapy because it was interfering with his job schedule. He sought no further therapy since 2021.

During the COVID lockdown, Biestek remained home but was not confined to his bed for long. He had intermittent back pain but wore a back brace a couple of times a week for about a year. He claims that he no longer lifts heavy weights anymore. Biestek testified about injuries in his past when he played college football, not related to the accident.

In her deposition, Schaefer stated that she underwent physical therapy for two months and had no surgery to date. She stated that she suffered from a prior herniated disk. She also stated that she could no longer lift weights as she used to.

Dr. Ferriter reported that he examined Biestek on June 20, 2022. He stated that Biestek complained of pain in his neck, mid-back, lower back, bilateral shoulders and hips. After administering various range of motion tests to Biestek, Dr. Ferriter concluded that Biestek did not suffer from any permanent or significant loss or limitation of use of any body part or function.

Dr. Ferriter also administered range of motion tests to Schaefer on that day and reached similar results. Schaefer was suffering from pain in her head, neck, mid-back and lower back. Dr. Ferriter concluded that her test results were all negative.

Dr. Springer reported on his examination of Schaefer's brain MRI, concluding that there was no permanent or significant damage to her brain.

Diallo argues that based on the evidence, there is no proof of serious injury to either plaintiff as a result of the accident, and the complaint and suit against him must be dismissed.

In opposition, plaintiffs contend that the evidence is too conclusory to warrant summary

judgment. They submit the following evidence: their deposition testimony, the medical reports from Dr. Edwin Perez, orthopedist, involving examination of plaintiffs in July 2020; the medical reports from Dr. Joel Mittleman involving plaintiffs on July 20, 2020 and October 27, 2020; and neurological examinations of Biestek by Dr. Aric Hausknecht on July 21, 2020 and August 25, 2020. Dr. Hausknecht also did a neurological examination of Schaefer on July 24, 2020.

The deposition testimony indicates that plaintiffs have been incapacitated from their normal activities as a result of the accident. The medical examinations by their doctors provide evidence of limitations in range of motion. Plaintiffs argue that the medical reports and records raise an issue of fact as to their current physical conditions.

"It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues" (*Birnbaum v Hyman,* 43 AD3d 374, 375 [1st Dept 2007]). "The substantive law governing a case dictates what facts are material and '[o] nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment' " (*People v Grasso,* 50 AD3d 535, 545 [1st Dept 2008]). "To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor" (*Kershaw v Hospital for Special Services,* 114 AD3d 75, 81 [1st Dept 2013]).

"Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial" (*Id.* at 82). Courts have continually held that the question of whether a plaintiff has a prima facie case for a serious injury, as described in section 5102 (d), remains an issue of law (*see Licari v Elliot,* 57 NY2d 230, 239 [1982]). Claims of serious injury must be supported by objective medical evidence demonstrating a significant physical limitation resulting from an accident (*see Pommells v Perez,* 4 NY3d 566, 574 [2005]).

Diallo has submitted evidence that warrants summary judgment in his favor. The deposition testimony provides proof that plaintiff's injuries are not as limited or significant as they assert. The reports from Dr. Ferriter are sufficiently detailed and objective. However plaintiffs' submission, their deposition testimony, the medical reports from Dr. Perez, and Dr. Mittleman; and the neurological examinations of both plaintiffs by Dr. Hausknecht the neurologist, who examined and evaluated plaintiffs in 2020 finding a temporary partial disability related to the

accident, raise an issue of fact as to whether plaintiffs' alleged injuries satisfy the serious injury threshold.

The court finds that plaintiffs have raised an issue of fact sufficient to preclude summary judgment as a matter of law in favor of defendants on the issue of whether plaintiffs have suffered serious injuries pursuant to section 5102 (d) of Insurance Law.

Accordingly, it is

ORDERED that defendant Mamadou Diallo's motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.

11/5/2025
DATE

James G. Clynes
JAMES G. CLYNES, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE