

**Ealy v Quinn**

2025 NY Slip Op 35077(U)

June 12, 2025

Supreme Court, Westchester County

Docket Number: Index No. 67340/2023

Judge: Christie L. D'Alessio

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

CHARLES C. EALY and TAWANDA EALY,

Plaintiffs,

-against-

DANTE M. QUINN, HUDSON VALLEY  
TRANSPORTATION, WILLIAM ALBERS, and  
ELLEN L. ALBERS,

Defendants.

**DECISION & ORDER**

No. 67340/2023

Mot. Seq. No. 002

D'ALESSIO, J.S.C.

Charles C. Ealy (“Charles”) and Tawanda Ealy (“Tawanda,” and with Charles, “Plaintiffs”) bring a cause of action for negligence and loss of consortium, respectively, against Dante M. Quinn (“Quinn”), Hudson Valley Transportation (“HVT”), William Albers (“William”), and Ellen L. Albers (“Ellen,” and with William, “Albers”). (Doc. 1; *see also* Docs. 2, 15). The parties were involved in a car accident in Yonkers, New York, on July 17, 2023.

Presently before the Court is a motion for summary judgment under CPLR 3212, filed by Quinn and HVT, seeking dismissal of this action in its entirety on the theory that Charles did not sustain a “serious injury” under N.Y. Insurance Law § 5102(d). (Docs. 43-49). The Albers join in the motion and Plaintiffs oppose same. (Docs. 51-56).

CPLR 3212(b) instructs, *inter alia*, that a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” This standard requires that a movant “make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Failure to carry this burden “requires

a denial of the motion, regardless of the sufficiency of the opposing papers.” *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 1063 (1993) (internal quotation marks omitted). Should the movant make this initial showing, “the burden shifts to the party opposing the motion to demonstrate the existence of a triable issue of fact.” *Metz v. Peconic Bay Med. Ctr.*, 203 A.D.3d 1040, 1041 (2d Dep’t 2022). Both the movant and opponent must, to meet their respective burdens, submit evidence in admissible form. *Moscatiello v. Wyde True Value Lumber & Supply Corp.*, 168 A.D.3d 833, 834 (2d Dep’t 2019); *Midfirst Bank v. Agho*, 121 A.D.3d 343, 347 (2d Dep’t 2014).

“In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party.” *Derise v. Jaak 773, Inc.*, 127 A.D.3d 1011, 1011 (2d Dep’t 2015). This perspective does not, however, relieve the motion’s opponent from their burden. “Material proffered in opposition to summary judgment is insufficient if it constitutes mere surmise, suspicion, speculation, or conjecture.” *Agulnick v. Agulnick*, 191 A.D.3d 12, 16 (2d Dep’t 2020). Indeed, simply raising the specter of metaphysical doubt will not refute a *prima facie* showing. The Court’s role on summary judgment is one of issue-spotting, not issue-determining. *See Suffolk Cty. Dep’t of Soc. Servs. v. James M.*, 83 N.Y.2d 178, 182 (1994); *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957).

Where a car accident involves two insured parties, state law instructs that in:

any action . . . for personal injuries arising out of negligence . . .  
there shall be no right of recovery for non-economic loss, except in  
the case of a serious injury . . . .

N.Y. Ins. Law § 5104(a) (emphasis added). A “serious injury” is, in turn, defined as:

a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation

of use of a body function or system; or 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 for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

N.Y. Ins. Law § 5102(d). According to the Court of Appeals, “the court should decide the threshold question of whether the evidence would warrant a jury finding that the injury falls within the class of injuries that, under no-fault, should be excluded from judicial remedy.” *Licari v. Elliott*, 57 N.Y.2d 230, 238 (1982). As such, “if it can be said, as a matter of law, that plaintiff suffered no serious injury within the meaning . . . of the Insurance Law, then plaintiff has no claim to assert and there is nothing for the jury to decide.” *Id.*

The pending motion relies upon a December 16, 2024 report prepared by Pierce Ferriter, M.D., a board-certified orthopedic surgeon, following a medical examination. (Doc. 47). That report contains the following disclaimer:

I am advised that there are no legally authenticated medical records . . . available for review. If any authenticated medical records are available at any later time[,] I would be pleased to review them and advise whether they have any effect on my opinion, which is based on today's examination.

(*Id.* at 3 (emphasis omitted)). A review of the docket, however, reveals that Plaintiffs provided relevant authorizations to defense counsel almost eight months before the date of the report, on March 28, 2024. (Doc. 18 at 19-23; Doc. 19 at 19-23). Quinn and HVT, having failed to file reply papers, do not explain why Dr. Ferriter was forced to reach his conclusions without the benefit of relevant, readily-accessible medical records. In short, because Dr. Ferriter's examination did not consider all relevant medical records, the movants failed to meet their *prima facie* burden. See *Gutierrez v. Albany Exp. Transp. Inc.*, No. 302687/2013, 2018 WL 4188503, at \*3 (Bronx Cty.

Sup. Ct. July 10, 2018); *Burke v. City of New York*, No. 305642/2014, 2018 WL 1044108, at \*2-3 (Bronx Cty. Sup. Ct. Jan. 8, 2018). The motion for summary judgment is, accordingly, denied.

In accordance with the foregoing, the motion filed by Quinn and HVT seeking summary judgment under CPLR 3212(b) is DENIED in its entirety for failure to make a *prima facie* showing. The parties are reminded that their next appearance, a Settlement Conference, is scheduled in the Trial Assignment Part on July 11, 2025 at 11:00 a.m.

The Clerk of the Court is respectfully directed to terminate Motion Sequence No. 002 (DENIED).

Dated: June 12, 2025  
White Plains, New York

**SO ORDERED.**



HON. CHRISTIE L. D'ALESSIO, J.S.C.