Schiff v Mekuria
2025 NY Slip Op 35292(U)
July 7, 2025
Supreme Court, Queens County
Docket Number: Index No. 701061/2021
Judge: Maurice E. Muir
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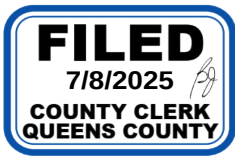
Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



DONA SCHIFF,

Plaintiff,

-against-

ABEL A. MEKURIA and VENTURE LEASING, LLC,

Defendants.

IAS Part - 42

Index No.: 701061/2021

Motion Date: 3/13/25

Motion Cal. No. 49

Motion Seq. No. 2

The following electronically filed ("EF") documents read on this motion by Abel A. Mekuria and Venture Leasing LLC (collectively, the "defendants") for an Order: a) pursuant to CPLR § 3212, granting summary judgment and dismissing the complaint of Dona Schiff ("Ms. Schiff" or "plaintiff") in as much as plaintiff fails to meet the serious injury threshold requirement mandated by Insurance Law Section 5102(d); and b) granting such other further relief as the Court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation- Exhibits.....	EF 34 - 42
Affirmation in Opposition-Exhibits.....	EF 48 – 56,58,59
Reply Affirmation.....	EF 57

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Ms. Schiff allegedly sustained in a motor vehicle collision. In particular, plaintiff alleges that May 29, 2019, at approximately 7:23 p.m., she was driving her motor vehicle on Vernon Boulevard at or near its intersection with 33rd Road, Queens, New York, when a motor vehicle own by Venture Leasing, LLC ("VLL") and operated by Abel A. Mekuria ("Mr. Mekuria") ran the stop sign and T-boned her motor vehicle. As a result, she sustained serious injuries. As a result, she sustained injuries to her

cervical spine, thoracic spine, lumbar spine, and left knee. Thereafter, on January 15, 2021, she commenced the instant action; and on or about March 6, 2021, issue was joined, wherein the defendant interposed an answer with eight (8) affirmative defenses (e.g., comparative negligence, collateral source rule and serious injury threshold, etc.). Now the defendants seek summary judgment, pursuant to CPLR § 3212, on the ground that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

It has long been established that the "legislative intent underlying the Comprehensive Motor Vehicle Insurance Reparation Act of 1974 (now Insurance Law § 5101, *et seq* – commonly known as the "No-Fault" statute) was to weed out frivolous claims and limit recovery to significant injuries (*Duel v. Green*, 84 NY2d 795 [1995]; *see also Toure v. Avis Rent A Car Sys.,* 98 NY2d 345 [2002]). New York's No-Fault Insurance Law § 5102 (d) defines "serious injury" 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." The Court of Appeals has held that the issue of whether a claimed injury falls within the statutory definition of a "serious injury" is a question of law for the courts in the first instance, which may properly be decided on a motion for summary judgment (*see Licari v. Elliott*, 57 NY2d 230 [1982]; *see also Charley v. Goss*, 54 AD3d 569 [1st Dept 2008] *aff'd* 12 NY3d 750, 876 NYS2d 700 [2009]; *Porcano v. Lelzman*, 255 AD2d 430 [2d Dept 1998]; *Nolan v. Ford*, 100 AD2d 579 [2d Dept 1984], *aff'd* 64 NYS2d 681 [1984]).

On a motion for summary judgment, the defendant has the initial burden of making a *prima facie* showing, through the submission of evidence in admissible form, that the injured plaintiff did not sustain a "serious injury" within the meaning of New York's No-Fault Insurance Law § 5102(d) (*see Gaddy v. Eyler*, 79 NY2d 955 [1992]; *Akhtar v. Santos*, 57 AD3d 593 [2d Dept 2008]). The defendant may satisfy this burden by submitting the plaintiff's deposition testimony and the affirmed medical report of the defendant's own examining physician (*Moore v. Edison*, 25 AD3d 672 [2d Dept 2006]; *Farozes v. Kamran*, 22 AD3d 458 [2d Dept 2005]).

When a defendant seeking summary judgment based on the lack of serious injury relies on the findings of the defendant's own witnesses, "those findings must be in admissible form, such as, affidavits and affirmations, and not unsworn reports" to demonstrate entitlement to judgment as a matter of law (*Pagano v. Kingsbury*, 182 AD2d 268, 270 [2d Dept 1992]). A defendant may also establish entitlement to summary judgment by using medical reports and records prepared by the plaintiff's own physicians (*see Fragale v. Geiger*, 288 AD2d 431 [2d Dept 2001]; *Grossman v. Wright*, 268 AD2d 79 [2d Dept 2000]; *Vignola v. Varrichio*, 243 AD2d 464 [2d Dept 1997]; *Torres v. Micheletti*, 208 AD2d 519 [2d Dept 1994]). The failure to make such a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*Xin Fang Xin v. Saft,* 177 AD3d 823 [2d Dept 2019]; *Rosenblum v. Schloss*, 175 AD3d 1339 [2d Dept 2019]; *Burns v. Stranger*, 31 AD3d 360 [2d Dept 2006]; *Rich-Wing v. Baboolal*, 18 AD3d 726 [2d Dept 2005]; *see generally, Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once defendant has met this burden, plaintiff must then submit objective and admissible proof of the nature and degree of the alleged injury in order to meet the threshold of the statutory standard for "serious injury" under New York's No-Fault Insurance Law (*see Duel v. Green*, 84 NY2d 795 [1995]; *Pagano v. Kingsbury*,182 AD2d 268 [2d Dept 1992]). However, if a defendant does not establish a *prima facie* case that the plaintiff's injuries do not meet the serious injury threshold, the court need not consider the sufficiency of the plaintiff's opposition papers (*Xin Fang Xin v. Saft,* 177 AD3d 823 [2d Dept 2019]; *Rosenblum v. Schloss*, 175 AD3d 1339 [2d Dept 2019]; *Burns v. Stranger*, 31 AD3d 360 [2d Dept 2006]; *Rich-Wing v. Baboolal*, 18 AD3d 726 [2d Dept 2005]; *see generally, Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Here, the court finds that summary judgment is not appropriate in this action, because the defendants failed to meet their prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) as a result of the subject accident (*see Toure v. Avis Rent A Car Sys.*, 98 NY2d 345 [2002]; *Gaddy v. Eyler*, 79 NY2d 955, 956-957 [1992]). The papers submitted by the defendants failed to eliminate triable issues of fact regarding the plaintiff's claim that she sustained a serious injury – pursuant to Insurance Law § 5102 (d). (*see Fanfan v.* Sowacki, 202 AD3d 922 [2d Dept 2022]; *Che Hong Kim v. Kossoff*, 90 AD3d 969 [2d Dept 2011]; *Rouach v. Betts*, 71 AD3d 977 [2d Dept 2010]). Since the defendants failed to meet their prima facie burden, it is unnecessary to determine whether the

submission by the plaintiff in opposition is sufficient to raise a triable issue of fact. (*see Fanfan v. Sowacki,* 202 AD3d 922 [2d Dept 2022]; *Che Hong Kim v. Kossoff*, 90 AD3d 969 [2d Dept 2011]). Notwithstanding the same, the court finds that the parties adduce conflicting medical expert opinions; and such conflicting expert opinions has raised credibility issues, which can only be resolved by a jury. (*Cerrone v. North Shore-Long Island*, 197 AD3d 449 [2d Dept 2021]; *Tinao v. City of New York*, 112 AD2d 363 [2d Dept 1985]; *Cummings v. Brooklyn Hosp. Ctr.*, 147 AD3d 902 [2d Dept 2017]; *Cassagnol v. Williamsburg Plaza Taxi*, 234 AD2d 208 [1st Dept 1996]).

Accordingly, it is hereby

ORDERED that the defendants' motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon the defendants and the clerk of this court on or before August 15, 2025.

The foregoing constitutes the decision and order of the court.

Dated: July 7, 2025
Long Island City, NY

Maurice E. Muir

MAURICE E. MUIR, J.S.C.

FILED
7/8/2025
COUNTY CLERK
QUEENS COUNTY