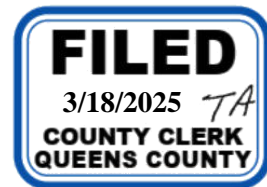


<b>Rubinov v Calderaro</b>
2025 NY Slip Op 35293(U)
March 12, 2025
Supreme Court, Queens County
Docket Number: Index No. 701135/2021
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. MOJGAN C. LANCMAN



JULIA RUBINOV,

IAS PART 20

Index No.: 701135/2021

Plaintiff,

Motion Seq. No.: 1

-against-

Motion Date: 8.28.2024

GEORGE CALDERARO and NML LIMO CORP.,

Motion Cal. No.: 38

Defendants.

The papers bearing NYSCEF Doc. Nos. 18-38 were read on the motion filed by the defendants, George Calderaro ("Calderaro") and NML Limo Corp. ("NML") (collectively, the "Defendants"), for summary judgment.

The plaintiff, Julia Rubinov (the "Plaintiff"), commenced this cause seeking to recover damages for personal injuries allegedly sustained in a motor vehicle accident (the "Accident"). Presently before the Court is the Defendants' motion for summary judgment dismissing the complaint. The application is grounded upon the assertion that the Plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 [d]. For the following reasons, the motion is granted.

I. Factual Background

The Accident occurred on June 19, 2018 on 126th Street at or near its intersection with Kew Gardens Road, Queens, New York. The Plaintiff was the operator of one of the two vehicles involved in the Accident. The other vehicle was owned by NML and operated by Calderaro.

The Plaintiff's bill of particulars alleges injuries to the left shoulder, left elbow, the cervical spine and the lumbar spine.

The bill of particulars also alleges that the Plaintiff sustained a serious injury within the meaning of the following serious injury categories: significant disfigurement; fracture; permanent loss of use of a body organ, member, function or system; significant limitation of use of a body function or system; permanent consequential limitation of use of a body function or system; and 90/180-day.

II. Discussion

The claim under the significant disfigurement category is dismissed because there is no evidence that the Plaintiff suffered an injury that a "reasonable person viewing the injury would have to regard it as unattractive or objectionable, or as the object of pity or scorn" (Knight v M &

*M Sanitation Corp.*, 122 AD3d 683, 684 [2d Dept 2014] [internal quotation marks and citations omitted]).

The claim under the fracture category is dismissed because there is no evidence that the Plaintiff sustained a fracture as a result of the Accident (*see Friscia v Mak Auto, Inc.*, 59 AD3d 492 [2d Dept 2009]).

The claim under the permanent loss of use of a body organ, member, function or system category is dismissed because there is no evidence that the Plaintiff sustained a permanent and total loss of use of a body organ, member, function or system (*see Oberly v Bangs Ambulance Inc.*, 96 NY2d 295 [2001]).

The claim under the 90/180-day category is dismissed because the Plaintiff testified at her deposition that she missed only several days from work and returned to work the week following the Accident (*see Radoncic v Faulk*, 170 AD3d 1058 [2d Dept 2019]; *Amato v Gorecik*, 167 AD3d 557 [2d Dept 2018]).

The Court now turns to the serious injury claims under the permanent consequential limitation and the significant limitation of use categories.

In support of their motion, the Defendants rely, *inter alia*, upon the reports of two medical experts. Dr. Howard A. Kiernan, an orthopedist, conducted the independent medical examination of the Plaintiff. The physician concluded in an affirmed report that the injuries relative to the cervical spine, the lumbar spine, left elbow and left shoulder consisted of “sprain/strain– resolved” and that range of motion testing relative to said body parts was normal. The Defendants also rely upon the affirmed reports of an expert radiologist, Dr. Jessica F. Berkowitz, who reviewed various manner of diagnostic films. The radiologist concluded that diagnostic studies of the cervical spine and the lumbar spine did not reveal any findings that are causally related to the Accident.

Through the affirmed reports of their experts, the Defendants establish *prima facie* entitlement to summary disposition (*see Lyons v New York City Transit Authority*, 208 AD3d 1105 [1st Dept 2022]). The burden thus shifts to the Plaintiff to raise a triable issue of fact.

In opposition, the Plaintiff submits an EEG/NCV report that was issued as a result of a test conducted on August 23, 2018 at Englinton Medical P.C. The report is signed by Dr. Igor E. Cohen; however, it is inadmissible because it is neither affirmed nor certified. In any event, the report, while indicating that the study was “abnormal,” does not address the issue of causation.

The radiology reports of Dr. Regina Moshe relative to lumbar and cervical spine MRI studies that are submitted in opposition do not help the Plaintiff either. Here, while the reports indicate various abnormalities, causation is not addressed.

The radiology report of Dr. Priyesh Patel relative to the left shoulder also fails to raise an issue of fact. While Dr. Patel noted abnormalities, he also does not address causation.

Lastly, the Plaintiff submits the affirmed report of Dr. Imram Asraf, who examined the Plaintiff on June 14, 2024, almost six years after the Accident.

Dr. Asraf concluded that the Plaintiff “suffered a causally related disability to the left shoulder, neck, back. Furthermore, the injuries sustained are causally related to the accident of June 19, 2018.” As explained below, Dr. Asraf’s report fails to raise a triable issue of fact for several reasons.

Dr. Asraf conducted range of motion testing on June 14, 2024 only with respect to the left shoulder and the lumbar spine. Thus, the Plaintiff fails to rebut the Defendants’ showing that range of motion testing relative to the cervical spine was normal. Since “[a]bsent limitations, there is no serious injury,” the cervical spine claim is dismissed (*Lopez v Morel-Ulla*, 144 AD3d 504, 505 [1st Dept 2016] [citation omitted]).

The last issue is whether the Plaintiff raises a triable issue of fact relative to the left shoulder and lumbar spine claims. Dr. Asraf found losses in range of motion with respect to flexion, external rotation, and abduction of the left shoulder, and left lumbar lateral flexion on testing he conducted on *June 14, 2024*, almost six years after the Accident.

However, conspicuously absent from the Plaintiff’s opposition is “any competent medical evidence that was contemporaneous with the subject accident showing any initial range of motion limitations in [her ] spine [and left shoulder]” (*Bell v Rameau*, 29 AD3d 839, 839 [2d Dept 2006] [citations omitted]; see also *Felix v New York City Tr. Auth.*, 32 AD3d 527 [2d Dept 2006]; *Ramirez v Parache*, 31 AD3d 415 [2d Dept 2006]; *Ranzie v Abdul-Massih*, 28 AD3d 447 [2d Dept 2006]).

The case of *Peart v Carreras*, 227 AD3d 479, 480 [1st Dept 2024], is also instructive and controlling: “[i]n opposition, plaintiff failed to raise a triable issue of fact, as his medical records contain no objective evidence of qualitative or quantitative limitations in any of the affected body parts that were contemporaneous with the accident. Plaintiff’s only submission was a report of a pain management physician, who examined him on one occasion more than two years after the accident ... Without any admissible evidence of plaintiff’s condition and treatment contemporaneous with the accident, the examination years after the accident was insufficient to reliably connect his current symptoms to the accident” [internal quotation marks and citations omitted]). The Plaintiff’s position in this cause is even less enviable than that of the plaintiff in *Peart*. Here, the only objective medical evidence of qualitative or quantitative limitations in any of the body parts the Plaintiff alleges were injured is Dr. Asraf’s report, which is based on an examination that was conducted on June 14, 2024, almost six years after the Accident. The left shoulder and lumbar spine claims must therefore also be dismissed (*see id.*).

### III. Conclusion

For the reasons stated above, it is hereby:

ORDERED, that the Defendants’ motion for summary judgment is granted; and it is further,

ORDERED, that the Plaintiff’s complaint is dismissed; and it is further,

ORDERED, that the Defendants shall serve a copy of this Order with Notice of Entry on the Plaintiff via NYSCEF by April 14, 2025; and it is further,

ORDERED, that the Clerk of the Court shall: (1) mark this cause dismissed; (2) close all motions; and (3) close all appearances.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York  
March 12, 2025



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MOJGAN C. LANCMAN, J.S.C.

