

Vicario v Ibe
2025 NY Slip Op 35330(U)
June 9, 2025
Supreme Court, Queens County
Docket Number: Index No. 705371/2021
Judge: Karen Lin
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SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

PRESENT: HON. KAREN LIN PART 24

Justice

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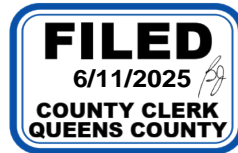
CHRISTINA VICARIO,

Plaintiff,

- v -

INNOCENT IBE, JULIA IBE,

Defendants.



INDEX NO. 705371/2021

MOTION DATE

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that defendants' motion for summary judgment is determined as follows:

Plaintiff Christina Vicario commenced this action to recover damages for personal injuries allegedly sustained on September 6, 2018, when the vehicle she operated was involved in a collision with a vehicle operated by defendant Innocent Ibe and owned by defendant Julia Ibe at or near the intersection of Sutphin Boulevard and Linden Boulevard in Queens County. Plaintiff alleges injuries to her cervical spine, lumbar spine, and thoracic spine, asserting that such injuries constitute a "serious injury" within the meaning of Insurance Law § 5102 (d) under the categories of "a fracture; a significant disfigurement; permanent loss 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 plaintiff from performing substantially all of the material acts which constitute [her] usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury [(90/180)]."

Defendants Innocent Ibe and Julia Ibe now move for summary judgment, pursuant to CPLR 3212, seeking dismissal of plaintiff's complaint alleging failure to meet the serious injury threshold mandated by Insurance Law § 5102 (d).

To establish their prima facie entitlement to summary judgment, the defendants must demonstrate by competent evidence that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) (*see Detoma v Dobson*, 214 AD3d 949, 951 [2d Dept 2023]) and that the plaintiff's injury was not caused by the accident (*id.*). Once this prima facie showing has been met by the defendants, the burden then shifts to the plaintiff to raise the existence of a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]). The evidence submitted in opposition to a motion for summary judgment must be viewed in the light most favorable to the non-moving party (*see Boulos v Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015]). The court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues" (*Lopez v Beltre*, 59 AD3d 683, 685 [2d Dept 2009]). As summary judgment is the procedural equivalent of a trial, "it must clearly appear that no material and triable issue of fact is presented.... This drastic remedy should not be granted where there is any doubt as to the existence of such issues" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

In support of their motion, defendants submit, among other things, their attorney affirmation, the verified complaint, summons, and bill of particulars, the transcript of plaintiff's deposition, and the affirmed medical reports of Dr. Pierce J. Ferriter (Ferriter) and Dr. Scott A. Springer (Springer), who are defendants' experts. Defendants contend that their submissions clearly demonstrate that there is no evidence to support plaintiff's allegations of a serious injury within the meaning of Insurance Law § 5102 (d). Dr. Ferriter, an orthopedist, conducted a physical examination of plaintiff on March 4, 2024, more than five years after the accident. In his report, he affirms that plaintiff had full range of motion in her cervical spine, thoracic spine, and lumbar spine, finding no swelling, discoloration, deformity, spasms, or complaints of tenderness upon palpation, and concluding that the cervical spine, thoracic spine, and lumbar spine sprains/strains were resolved. Dr. Ferriter further determined that plaintiff is working on a full-time basis, capable of working without restrictions, and can perform her activities of daily living without limitations. He also found no evidence of orthopedic disability, permanency, or residuals. However, Dr. Ferriter's examination took place outside of the scope of the first 180 days following the subject accident, and he failed to address plaintiff's 90/180 claim, clearly set forth in her bill of particulars (*see Liburd v Mondal*, 215 AD3d 655, 655 [2d Dept 2023]);

Alexandre v Neptune, 214 AD3d 759, 759 [2d Dept 2023]; *Yung v Eager*, 51 AD3d 638, 638 [2d Dept 2008]; *Jocelyn v Singh Airport Service*, 35 AD3d 668, 668 [2d Dept 2006]).

Dr. Springer, a radiologist, independently reviewed the MRIs of plaintiff's cervical spine and lumbar spine on November 12, 2018. In his affidavit, he concluded that the observed conditions in plaintiff's cervical spine were degenerative and there were "no posttraumatic changes causally related to the 9/6/2018 incident" in her cervical spine and lumbar spine. However, Dr. Springer's opinion that the conditions in her cervical spine were degenerative, and changes in her cervical spine and lumbar spine were not causally related to the accident, is unconvincing, as his report is devoid of any evidence that he reviewed plaintiff's prior medical records or obtained plaintiff's medical history in order to render such an opinion (*see Collins v Stone*, 8 AD3d 321, 323 [2d Dept 2004]). Accordingly, Dr. Springer failed to address plaintiff's 90/180 claim and provided no conclusion that the injuries were not serious within the meaning of Insurance Law § 5102 (d) (*see Beyel v Console*, 25 AD3d 636, 636 [2d Dept 2006]).

Moreover, defendants' submissions failed to adequately address all the injuries and categories of serious injury alleged in plaintiff's bill of particulars. Defendants failed to sufficiently address several specific injuries, clearly set forth in plaintiff's bill of particulars, as neither of defendants' experts provide medical opinion concerning whether plaintiff suffers from cervicobrachial syndrome, thoracic radiculitis, or lumbosacral disc syndrome. Defendants also failed to adequately address plaintiff's claim of serious injury under the significant disfigurement category, clearly set forth in plaintiff's bill of particulars (*see Onder v Kaminski*, 303 AD2d 665, 666 [2d Dept 2003]; *Perez v Hilarion*, 36 AD3d 536, 537 [1st Dept 2007]).¹ A defendant moving for summary judgment on serious injury grounds must adequately address each and every claim set forth in the plaintiff's bill of particulars through competent medical evidence; if not, summary judgment must be denied (*see Cohn v Khan*, 89 AD3d 1052, 1053 [2d Dept 2011]). Consequently, defendants' failure to provide such evidence adequately addressing all alleged injuries and categories of serious injury as alleged in plaintiff's bill of particulars renders their prima facie showing deficient and mandates denial of the motion without regard to the

¹ While it appears that defendants' counsel determined, in conclusory form, that the significant disfigurement category, as set forth in plaintiff's bill of particulars, could not "possibly be claimed to be applicable to the injuries alleged," this is insufficient to satisfy their prima facie entitlement to summary judgment by competent medical evidence.

sufficiency of plaintiff's opposition papers (*see id.*; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Since defendants have failed to meet their initial burden of making a prima facie showing that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102 (d), the Court need not consider whether plaintiff's opposition papers raised a triable issue of fact (*see Baptiste v New York City Tr. Auth.*, 230 AD3d 629, 629 [2d Dept 2024]; *Vaccaro v Francolopez*, 205 AD3d 760, 760 [2d Dept 2022]; *Senior v Mikhailov*, 71 AD3d 864, 864 [2d Dept 2010]).

Accordingly, for the foregoing reasons, it is hereby

ORDERED, that defendants' motion for summary judgment 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 defendants within twenty (20) days from the date of entry.

This constitutes the Decision and Order of the Court.

Dated: June 9, 2025
Long Island City, New York



Hon. Karen Lin, J.S.C.
Justice of the Supreme Court

