

**Terry v Tejada**

2026 NY Slip Op 30176(U)

January 8, 2026

Supreme Court, New York County

Docket Number: Index No. 157557/2021

Judge: Christopher Chin

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CHRISTOPHER CHIN PART 22

Justice

TARWIN TERRY, ERICK HUGHIE
Plaintiff,
- v -
ALBERTO CORPORAN TEJEDA, FALIKOU
DOUMBIA,
Defendant.
INDEX NO. 157557/2021
MOTION DATE 10/13/2024, 11/14/2024
MOTION SEQ. NO. 001 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 59, 61, 65, 66, 67, 68, 69, 70, 71, 79

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 60, 62, 72, 73, 74, 75, 76, 77, 78, 80

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument, it is

ORDERED that the motion for summary judgment by defendant Alberto Corporan Tejada to dismiss the action by plaintiff Erick Hughie (Hughie) (Motion Sequence No. 001) and the motion for summary judgment by defendant Alberto Corporan to dismiss the action commenced by plaintiff Tarwin Terry (Terry) (Motion Sequence No. 003) are granted, as explained below.

This is a negligence/personal injury action, in which plaintiffs seek monetary damages

for injuries they allegedly sustained in a motor vehicle accident on September 1, 2020.

The complaint alleges that plaintiffs suffered severe injuries resulting from a two-vehicle collision that occurred on September 1, 2020, on East 135<sup>th</sup> Street, at or near its intersection with 5<sup>th</sup> Avenue, New York, New York. Defendant Alberto Corporan Tejada (Tejada) was the owner and operator of the vehicle in which plaintiffs were passengers (“host vehicle”). Defendant Falikou Doumbia (Doumbia) was the owner and operator of the second vehicle.

In seeking summary judgment of dismissal against both plaintiffs, defendants argue that plaintiffs have not suffered a serious injury pursuant to sections 5102 (d) and 5104 (a) of the New York State Insurance Law (Insurance Law).

In Motion Sequence No. 001 as to plaintiff Hughie (Motion Seq. No. 001), defendant submits as evidence a copy of the Bill of Particulars; the transcript of Hughie’s deposition testimony; an affirmed medical report from Dr. Pierce Ferriter, an orthopedic surgeon who examined Hughie on July 21, 2023; and an affirmation from Dr. Scott Springer, a radiologist who reviewed the results from a cervical spine MRI conducted on Hughie on October 8, 2020.

According to the Bill of Particulars, as a result of the subject accident, Hughie suffered soft tissue injuries to his cervical spine and left shoulder. At his deposition, Hughie testified that he told his sister, that he had pain in his neck, left shoulder and back. He did not advise the police that he needed medical assistance, and he also did not call for an ambulance. After the accident, plaintiffs got out of Tejada’s vehicle and took another vehicle to their destination.

On the same day, Hughie went to New York Presbyterian Hospital, where he complained of pain in his neck, left shoulder and back. After being x-rayed, he was informed that nothing was broken. Hughie was given painkillers and discharged. A week later, Hughie sought physical

therapy and treatment at a facility on Bryan Avenue, Bronx, New York. The treatment was discontinued after 7 months.

Dr. Ferriter examined Hughie's cervical spine, lumbar spine and left shoulder, and found normal range of motion. Dr. Ferriter also performed the following tests: Spurling's, Lhemitte's, Hoffman's and Compression, which had negative results. Dr. Ferriter found no atrophy, no tenderness or muscle spasm upon palpitation. He concluded that Hughie suffered no significant or permanent injuries as a result of the accident, and that he could pursue a normal and productive life.

Dr. Springer reviewed Hughie's cervical spine MRI and found no fracture, subluxation or soft tissue swelling, no disc bulges or herniation. He found some indication of degenerative changes not related to the accident. He concluded that Hughie suffered no injury that was causally related to the accident.

In Motion Sequence No. 003, defendants contend that Terry's injuries fail to meet the serious injury threshold as defined by section 5102 (d) of Insurance Law. They submit as evidence a copy of the Bill of Particulars; Terry's deposition testimony; an affirmed medical report by Dr. Ferriter who examined Terry on September 20, 2024; and an affirmation by Dr. Springer who reviewed the results of Terry's back and neck MRI conducted on October 13, 2020.

The Bill of Particulars indicates that Terry had soft tissue injuries to her cervical spine, lumber spine and right shoulder. At her deposition, she testified that at the time of the accident, she had pain in her knees, right shoulder, back and neck. She also stated that she suffered no bleeding, bruising or loss of consciousness. She was able to get out of Tejada's vehicle without assistance. On the same day, she took another vehicle to New York Presbyterian

Hospital where she complained of pain in her knees, back, neck and shoulder. She was given painkillers and discharged after four hours.

Terry testified that she sought physical treatment at the Bryan Avenue facility, which lasted until May 2022. She received a back and neck MRI and an injection in her back. She underwent no surgery.

Dr. Ferriter affirmed that he examined Terry's cervical spine, lumber spine and right shoulder, conducting range of motion tests and other tests. His procedure was similar to that performed on Hughie. Dr. Ferriter reached similar conclusions, finding no significant or permanent injuries related to the accident. Dr. Springer affirmed reviewing the MRI, reaching the same conclusions he made upon examining Hughie's MRI. Dr. Springer stated that he found no major irregularities related to the accident, and indicated some degenerative changes unrelated to the accident.

Defendants argue that based on the objective evidence, there is no proof of serious injury, as defined in section 5102 (d) of NYS Insurance Law as to either plaintiff.

"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 [1<sup>st</sup> Dept 2007]). "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 [citation omitted]" (*Kershaw v Hospital for Special Services*, 114 AD3d 75, 81 [1<sup>st</sup> 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 [citation omitted]" (*id.* at 82).

Section 5102 (d) of Insurance Law provides a clear definition of serious injury through

various classifications which provide as follows:

“(d) ‘serious injury’ means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of a bodily organ, member, function or system; permanent consequential limitation of use of a bodily organ, member, function or system; significant limitation of use of a bodily organ, member, function or system; or 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.”

Here, based upon the evidence presented, defendant has shown that plaintiffs have none of the elements constituting a serious injury and are entitled to summary judgment of dismissal. The burden then shifted to plaintiffs to submit in admissible proof sufficient to raise an issue of fact precluding the granting of summary judgment.

The unsworn/unauthenticated medical records that have been supplied by plaintiff in opposition however, fail to raise a triable issue of fact as to whether plaintiffs sustained serious injuries, since they fail to comply with CPLR 2106 (as amended effective January 1, 2024) (*see Grandsard v. Hutchinson*, 227 AD3d 491 [1<sup>st</sup> Dept 2024]; *Offman v. Singh*, 27 AD3d 284 [1<sup>st</sup> Dept 2006]; *Grasso v Agnerami*, 79 NY2d 813, 814-15 [1991]; *Sooknan v Pinales*, 215 AD3d 608, 609 [1<sup>st</sup> Dept 2023]).

Accordingly, it is

ORDERED that defendant Alberto Corporan Tejada’s motion for summary judgment dismissing the claims of plaintiff Tarwin Terry (Motion Seq. No. 003) is granted; it is further

ORDERED that defendant Alberto Corporan Tejada’s motion for summary judgment dismissing the claims of plaintiff Erick Hughie (Motion Seq. No. 001) is granted; it is further

ORDERED that the Clerk is directed to enter judgment of dismissal in favor of both defendants Alberto Corporan Tejada and Falikou Doumbia, upon proof of service of a copy of this order with notice of entry.<sup>1</sup>

1/8/2026  
DATE

  
CHRISTOPHER CHIN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE	<input type="checkbox"/> DENIED	<input type="checkbox"/>	NON-FINAL	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/>	GRANTED		<input type="checkbox"/>	GRANTED IN	
	APPLICATION:	<input type="checkbox"/>	SETTLE	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF	<input type="checkbox"/>	INCLUDES	<input type="checkbox"/>	FIDUCIARY	<input type="checkbox"/>	REFERENCE

<sup>1</sup> While defendant Falikou did not file a motion for summary judgment dismissing plaintiffs' claims, since moving defendant Tejada established plaintiffs failed to sustain a serious injury as defined by Insurance Law section 5102 (d), under CPLR 3212 (b), the court grants summary judgment of dismissal as to defendant Falikou.