Brooks v NYU Langone Hosps.
2026 NY Slip Op 31529(U)
April 8, 2026
Supreme Court, Kings County
Docket Number: Index No. 513837-2023
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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CHARLES BROOKS,

Plaintiff,

-against-

NYU LANGONE HOSPITALS and JORGE A. CAJAMARCA-ANDRADE, in his official job capacity as a NYU LANGONE HOSPITALS Emergency Medical Technician,

Defendants.
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Index No.: 513837-2023
Motion Date: 2-9-26
Mot. Seq. No.: 4

DECISION/ORDER

The following papers, which are e-filed with NYCEF as items 76-88 were read on this motion:

The Plaintiff moves for an Order, pursuant to CPLR 2221(e), granting leave to renew his opposition to Defendants' prior motion for summary judgment dismissing Plaintiff's complaint on the ground that he did not suffer a serious injury within the meaning Insurance Law 5102(d). Upon renewal, Plaintiff seeks an Order denying the motion and vacating the Decision and Order dated May 29, 2025, which granted the motion.

In the Decision and Order granting Defendants' motion for summary judgment, the Court determined that the Defendants established their prima facie entitlement to summary judgment by submitting the affirmed Independent Medical Examination (IME) report of Dr. Freeman, which demonstrated that the plaintiff did not suffer a serious injury to the cervical or thoracic spine under the "permanent consequential limitation of use" or "significant limitation of use" categories. The Court further found that the Defendants established that the Plaintiff did not suffer a serious injury under the 90/180-day criteria based on Plaintiff's deposition testimony that he was not confined to his bed or home, returned to his full-time job as a counselor two to three days after the accident, and missed no time from his work at Radio City Music Hall.

The Court also found that Plaintiff's submissions in opposition, which included records from Atlantic Orthopedics and Sports Medicine, were not in admissible form and did not raise a

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triable issue of fact. The Court held that certification submitted to lay a foundation for the admission of these records as "business records" within the meaning of CPLR 4545, which vaguely referred to only four unknown pages of the records submitted, was insufficient. Lastly, the Court rejected Plaintiff's contention that the medical reports referenced by Dr. Freeman in his IME report create a triable issue of fact as to whether Plaintiff suffered a serious injury since none of those reports were based on a recent examination .

The new evidence upon which Plaintiff's motion to renew is based includes the affirmation of Dr. Joshua Bonsell dated January 7, 2025, the affirmation of Dr. Martin Quirno dated April 28, 2025, and Dr. Quirno's surgical records. Dr. Bonsell's affirmation sets forth objective proof for Plaintiff's range-of-motion decreases in his Plaintiff's cervical spine that were present more than three years after the accident, which he attributes to the subject motor vehicle accident. Dr. Quirno also noted significant loss of range of motion Plaintiff's cervical spine. His surgical records reveal that Plaintiff underwent an anterior cervical discectomy and fusion surgery on June 13, 2025.

Plaintiff asserts that the newly presented evidence could not be submitted with the original opposition due to circumstances beyond his control. Plaintiff's counsel explains that while Dr. Bonsell initially evaluated the Plaintiff on January 7, 2025, he refused to execute an affirmed report until the Plaintiff received a second opinion from a surgeon. Plaintiff's counsel explains that due to administrative delays and physician scheduling, the earliest available appointment with the surgeon, Dr. Quirno, did not occur until April 28, 2025, which fell after the return date of the original motion.

Furthermore, although counsel emphasizes it was made clear to Dr. Bonsell that his report was necessary, Dr. Bonsell did not actually dictate, sign, and affirm the report until June 2025, after the Court had already marked the original motion as submitted and issued its determination. Plaintiff contends that these office delays, coupled with the physicians' cautious requirement for a post-motion surgical evaluation prior to affirming their findings, constitute a reasonable justification for the failure to present these facts on the prior motion.

Defendants argue that the motion to renew must be denied because the plaintiff failed to establish any new evidence that was not available at the time of the initial motion, and that

Plaintiff failed to provide reasonable justification for failing to present such evidence on the prior motion. Defendants contend that the reports of Dr. Bonsell and Dr. Quirno are not actually new evidence because the reports were based on injuries known to the plaintiff at the time of the original motion, the very situation the court addressed in *Ehlers v. Byrnes*, 162 A.D.3d 1576 (4th Dept. 2018), where it was held that post-motion treatment based on pre-existing evidence does not constitute new facts.

Discussion:

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination (*see* CPLR 2221[e][2]) and shall contain reasonable justification for the failure to present such facts on the prior motion (*see id.* § 2221[e][3]). "The new or additional facts either must have not been known to the party seeking renewal or may, in the Supreme Court's discretion, be based on facts known to the party seeking renewal at the time of the original motion" (*Carmike Holding I, LLC v. Smith*, 180 A.D.3d 744, 747, 120 N.Y.S.3d 141 [internal quotation marks omitted]). "While it may be within the court's discretion to grant leave to renew upon facts known to the moving party at the time of the prior motion, a motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation. Thus, the court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion" (*Seegopaul v. MTA Bus Co.*, 210 A.D.3d 715, 716, 177 N.Y.S.3d 694; *see Dupree v. Westchester County Health Care Corp.*, 164 A.D.3d 1211, 1214, 84 N.Y.S.3d 176).

While surgical procedures referred to Plaintiff in support of the motion did not occur prior to the submission of the prior motion, these procedures are not "new facts" within the meaning of CPLR 2221(e). Crucially, Plaintiff did not demonstrate that there was anything "new" regarding this medical condition or physical limitations prior to the submission of the prior motion. The Plaintiff also failed to produce evidence that the pathology addressed by the surgery was undiscoverable or that his condition was misapprehended at the time the original motion was submitted.

In *Ehlers v. Byrnes*, 2017 N.Y. Misc. LEXIS 1872, 2017 NY Slip Op 31045(U) (Sup. Ct., Erie County 2017), *aff'd* 162 A.D.3d 1576 (4th Dept. 2018), a strikingly similar case, the court held that post-motion surgical intervention and accompanying medical reports do not constitute "new facts" if they are merely new diagnoses based upon medical conditions that were already known to the plaintiff prior to the original motion's determination. The court in *Ehlers*, in denying renewal emphasized that because the physicians' opinions relied upon evidence that was in existence at the time of the original motion was not "newly discovered," and renewal was not a "second chance" for a party who failed to exercise due diligence in their initial factual presentation.

Furthermore, the court noted that if a plaintiff is awaiting surgical evaluations during the pendency of a motion, the Plaintiff is obligated to request an adjournment rather than allowing the motion to be decided on an incomplete record and that to hold otherwise would sanction unending litigation where a party could indefinitely restart a case by receiving new diagnoses for the same underlying injuries.

For the above reasons, Plaintiff's motion must be denied. Plaintiff f has offered no adequate explanation as to why he failed to obtain and submit a competent medical report from a physician prior to the Court's initial ruling, nor did he demonstrate that renewal is based on evidence that was not in existence at the time the prior motion was submitted. If Dr. Bonsell refused to provide a timely report of his examination, plaintiff could and should have sought the services of another physician or asked for an adjournment. A motion to renew must be supported by a "reasonable justification" for the failure to present the facts originally (CPLR 2221(e)(3)), which is lacking here. .

Accordingly, it is hereby:

ORDERED, that the Plaintiff's motion for leave to renew is DENIED.

The foregoing constitutes the Decision and Order of the Court.

Dated: April 8th, 2026

PPS

PETER P. SWEENEY, J.S.C.