

SHORT FORM ORDER

SCAN

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 36
NASSAU COUNTY

OPHELIA RAMOS.

Plaintiff.

- against -

Sequence No.: 008 & 009
Index No.: 012480/02

DIOMARY CABRERA, PABLO E. CABRERA
and TERESA M. RHODEN.

Defendants.

PABLO CABRERA.

Plaintiff.

- against -

TERESA M. RHODEN and OPHELIA M. RAMOS.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motions and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Upon reading the papers submitted and due deliberation having been had herein, defendants Diomary Cabrera and Pablo E. Cabrera's motion for summary judgment is hereby denied.

Plaintiff, Ophelia Ramos, allegedly suffered personal injuries as a result of an automobile accident in which the car she was driving was involved in an accident with an automobile owned by Diomary Cabrera and operated by defendant, Pablo E. Cabrera and a car owned and operated by defendant Teresa M. Rhoden on December 16, 2000. Plaintiff claims to have suffered the following injuries:

“Disc bulge measuring 2-3 mm deforming the anterior epidural fat at L5-S1; L5-S1 Radiculopathy; straightening of the cervical lordotic curve; burning sensation in her left hand and left foot; restriction of motion of the lumbar spine; positive straight leg raises bilaterally; restriction of motion of the cervical spine; cervical myositis; right shoulder restriction of motion; cervical radiculopathy; tendonitis of the right shoulder; lower back pain radiating down to the buttocks; diminished sensation over the right C5-C6 dermatomes; diminished sensation over the right L4-L5 dermatomes; muscle spasm is present in the cervical paraspinal region; muscle spasm is present in the lumbosacral paraspinal region.”

Defendants move for summary judgment to dismiss the complaint on the basis that the plaintiff did not sustain serious injuries as defined by Insurance Law §5102(d).

In order to succeed on a motion for summary judgment, defendants must demonstrate that there are no issues of fact by the tender of evidence in admissible form. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). In opposing a motion for summary judgment, plaintiff must demonstrate, through admissible evidence, that a genuine issue of material fact exists. Zuckerman v. City of New York, supra. Plaintiff must prove she sustained serious injuries as defined by Insurance Law §5102(d).

Insurance Law §5104(a) provides “[n]otwithstanding any other law, in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss.”

Insurance Law §5102(d) defines a “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 nonpermanent 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.”

In support of his motion, defendant annexes the medical affirmations of Arnold M. Illman, M.D., an orthopedist and Erik J. Entin, M.D., a neurologist.

At the outset, the medical affidavits of Dr. Illman and Dr. Entin do not satisfy the burden of the defendant to produce objective medical evidence. Dr. Illman performed an orthopedic

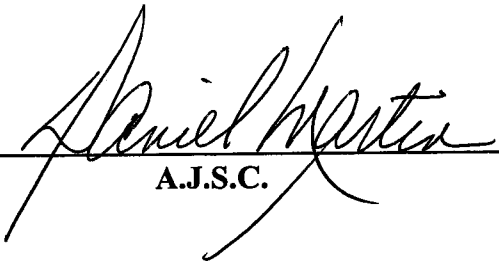
~~examination of plaintiff on July 9, 2003, and reports on the degrees of the range of motion in~~
plaintiff's lumbar and cervical spine and plaintiff's shoulder. However, Dr. Illman fails to compare the specified findings to the normal ranges of motion and therefore the report fails to objectively demonstrate that plaintiff did not suffer serious injuries. See, Aronov v. Leybovich, 3 A.D.3d 511 (2nd Dep't 2004). Dr. Entin performed a neurological examination of plaintiff on December 10, 2003. Dr. Entin's report does not set forth the objective tests administered on plaintiff. See, Junco v. Ranzi, 288 A.D.2d 440 (2nd Dep't 2001). Therefore, the court disregards the medical reports of Dr. Illman and Dr. Entin.

Based upon the foregoing the court concludes that defendants failed to meet their burden. Where, as here defendants fail to meet their initial burden of demonstrating entitlement to summary judgment, the court shall deny the motion regardless of the sufficiency of the opposition papers. Ayotte v. Gervasio, 81 N.Y.2d 1062 (1993); Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986).

According, defendants Diomary Cabrera and Pablo E. Cabrera's motion for summary judgment is denied.

So Ordered.

Dated: July 29, 2004


A.J.S.C.

ENTERED

AUG 04 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**