SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

----------X **PART 13**

RUBEN BONILLA-GARCIA and MARIA RUIZ,

INDEX NO. 13011/04

Plaintiff, **X X X**

-against- **MOTION DATE: 12/5/06**
SEQUENCE NO. 002

THOMAS McCARTHY and CHRISTINA McCARTHY,

Defendants.

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Notice of Motion, Affs. & Exs.....1
Affirmation In Opposition & Exs.....2
Reply Affirmation & Exs.....3

Upon the foregoing papers, it is ordered that the motion by the defendant for an order granting summary judgment dismissing the Complaint on the ground that the plaintiffs did not sustain a serious injury (Insurance Law §5102(d)) is granted as to both plaintiffs.

This is an action to recover damages for the personal injuries sustained by the plaintiffs as a result of a two car accident which occurred on Taylor Street, in Hempstead, N.Y. on November 20, 2002. Plaintiff Maria Ruiz was the passenger in a car owned and operated by plaintiff Ruben Bonilla-Garcia. The other car was owned by Christina McCarthy and operated by Thomas McCarthy.

Plaintiffs were not hospitalized and lost wages are not claimed. Ruben Bonilla-Garcia alleges injuries to the cervical spine and disc herniation. Maria Ruiz alleges injuries to the cervical spine and herniation. Both plaintiffs allege the injuries to be permanent.

The proponent of a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). Once the movant has demonstrated a *prima facie* showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 49 NY2d 557 (1980)).

Defendants have met their burden of a *prima facie* showing that plaintiffs did not sustain a serious injury within the meaning of Insurance Law §5102(d) (*Toure v. Avis Rent A Car System*, 98 NY2d 345 (2002)).

In opposition to this application both plaintiffs submit the statements of chiropractor, Dr. Charles A. Aronica. The unsworn report of their treating chiropractor setting forth objective medical findings of her injuries is not in admissible form and thus is insufficient to raise an issue of fact. (Butera v Woodhouse, 267 A.D.2d 1039 (1999)).

The sworn report of physiatrist, Dr. Emil Stracar, resulting from an examination of Maria Ruiz conducted on February 19, 2003 concludes: past cervical and lumbosacral sprain without any indication that this condition is causally connected to the November 20, 2002 car accident (*Ranzie v. Abdul-Massih*, 28 AD3d 447 (2nd Dept., 2006)).

The unsworn reports of radiologist, Kornelia Teslic, for both plaintiffs are also insufficient since the mere existence of a herniated disc does not constitute serious injury (*St. Pierre v. Ferrier*, 28 AD3d 641 (2nd Dept., 2006)).

The sworn report of plaintiffs' orthopedist, Jay Nathan, from his June 7, 2002 examination of both plaintiffs indicates that they have cervical and lumbar sprains, pre-existing degenerative joint diseases and no objective evidence of orthopedic disability.

Plaintiff's statements, and those of his doctor reiterating his claims, that he was otherwise limited due to his own subjective complaints of pain, are also insufficient to defeat summary judgment (*Georgia v. Ramataur*, 180 AD2d 713 (2nd Dept. 1992); *Scheer v. Koubek*, 70 NY2d 678 (1987)).

Dated: February 5, 2007.

Anthony L. Parga, J. S. C.