SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

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SANDRA SORTO,

INDEX NO. 10810/05
XXX

Plaintiff,

-against-

MOTION DATE: 1/17/07
SEQUENCE NO. 001

MILENA I. MORALES and OLMAN C. MORALES,

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 defendants for an order granting summary judgment dismissing the Complaint on the ground that the plaintiff did not sustain a serious injury pursuant to Insurance Law §5102(d) is granted.

This is an action to recover damages for the personal injuries sustained by the plaintiff as a result of a two-car accident which occurred in Baldwin, N.Y. on March 28, 2003. Plaintiff was the owner and operator of a motor vehicle. The other car was owned by Olman Morales and operated by Milena Morales.

Plaintiff injured her back and right knee, and had no health insurance on the date of the accident and did not go to the hospital or seek medical help at the time of

the accident and was confined to home for two weeks. Plaintiff is a home health aide. Plaintiff saw a chiropractor with her attorney two days after the accident. Plaintiff saw the chiropractor everyday (5 days a week) for three months. The chiropractic treatments ended when the No-Fault benefits expired.

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 Las §5102(d) (*Toure v. Avis Rent A Car System*, 98 NY2d 345 (2002)).

Plaintiff failed to raise a triable issue of fact as to whether she sustained a serious injury. Plaintiff does submit the sworn report of radiologist, John T Rigney, indicating a disc bulge and right knee joint effusion and equivocal appearance of anterior cruciate ligament. However, there is no medical proof contemporaneous with the accident at issue to show range of motion limits in her spine or knee (*Suk Ching Yeung v. Rojas,* 18 AD3d 863 (2nd Dept., 2006)).

The unsworn report of her 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)).

Plaintiff's statements, and those of her doctor reiterating her claims, that she was otherwise limited due to her 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)).

The legislative intent underlying the No-Fault law was to weed out frivolous claims and limit recovery to significant injuries. As such, courts have required objective proof of a plaintiff's injury in order to satisfy the statutory serious physical injury threshold. Subjective complaints alone are not sufficient (*Toure v. Avis Rent A Car Systems, Inc.*, 98 NY2d 345 (2002))

Dated: March 6, 2007.

Anthony L. Parga, J. S. C.