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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 9

NINA RUSSO,

Plaintiffs,

INDEX NO. 3088/09

XXX

MOTION DATE: 4/26/10

SEQUENCE NO: 01, 02, 03

-against-

MARC H. PIERRE and DREW R. BENEDETTI,

Defendants.

-----X

Notice of Motion, Affirmation, & Exhibits.....	<u> 1 </u>
Cross Motions.....	<u> 2-3 </u>
Opposition to Motion.....	<u> 4 </u>

Upon the foregoing papers, it is ordered that the motion by defendant Drew Benedetti and cross motion by Marc H. Pierre for an order granting summary judgment dismissing the Complaint on the ground that the plaintiff did not sustain a serious injury (Insurance Law §5102(d)) is granted.

The cross - motion by the Plaintiff for an order granting summary judgment on the issue of liability is denied.

This is an action to recover damages for the personal injuries sustained by the plaintiff as a result of a three car motor vehicle accident which occurred on Southern State Parkway on August 21, 2008. Plaintiff was the passenger in a car owned by defendant Drew Benedetti. The other car was operated by defendant Marc. H. Pierre. The third car is not part of this litigation.

On the issue of liability, Plaintiff Nina Russo was a passenger in the middle car of a three car "pile-up". The court cannot discern from Plaintiff's moving papers whether plaintiff was the

operator or a passenger in the middle car. The complaint alleges Drew Benedetti to have been the operator and Plaintiff's affidavit dated 3/3/10 cites plaintiff as the operator.

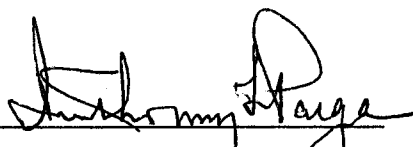
In support of Defendants' application for summary judgment, defendant's submit the report of orthopedist Peter J. Ajemian. He reviewed plaintiff's medical records, examined her on 11/6/09 and administered objective tests to determine the extent of her injuries. Dr. Ajemian opined that....IMPRESSION:"Resolved cervical spine and lumbar spine strains without clinical compromise and good functional outcome. There is no objective evidence of disability. There is no need for further treatment".

In opposition, plaintiff argues that defendant's have not met their burden of showing that plaintiff did not sustain a personal injury by an affirmation of counsel. CPLR 3212[b] provides that a summary judgment motion "shall be supported by affidavit" of a person "having knowledge of the facts" as well as other admissible evidence. A conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not establish the movant's prima facie burden. JMD Holding Corp. v. Cong. Fin. Corp., 4 N.Y.3d 373 (2005), Beaucejour v. General Linen Supply & Laundry Co., Inc., 39 A.D.3d 444 (2d Dep't 2007)

Plaintiff also submits her affidavit as to how the accident happened and her subjective complaints of pain and discomfort and inability to resume her activities since the accident.

The medical affirmations by Robert Diamond and Ajendra Sohal are unsupported by acceptable medical evidence and are insufficient to defeat a motion for summary judgment directed to the threshold issue of whether the plaintiff has suffered serious physical injury. *Georgia v. Ramautar*, 180 AD2d 713 (2nd Dept. 1992); *Mobley v. Riportella*, 241 AD2d 443 (2nd Dept. 1997). A doctor must cite the objective tests performed on the injured plaintiff or specify not only the extent and degree of any limitations, but also its duration. *Giannakis v. Paschlidou*, 212 AD2d 502 (2nd Dept. 1995); *Weber v. Harbus*, 212 AD2d 525 (2nd Dept. 1995).

Dated: June 30, 2010


Anthony L. Parga, J.S.C.

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