

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Mendez v. Mitchell

125 A.D.3d 618 (N.Y. App. Div. 2015) · No. 2014-07867 · Decided February 4, 2015

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendants' motion for summary judgment in a personal-injury action. The defendants failed to establish prima facie that the plaintiff did not sustain a serious injury under Insurance Law § 5102(d), including the 90/180-day category.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; L. Priscilla Hall, J.; Sheri S. Roman, J.; Jeffrey A. Cohen, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	February 4, 2015
DOCKET	2014-07867
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing the personal-injury complaint as asserted by Reina S. Mendez.
STANDARD OF REVIEW	Summary judgment is proper only where the movant establishes its prima facie entitlement to judgment as a matter of law; if the movant fails to meet that burden, the motion must be denied without consideration of the sufficiency of the opposition papers.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Anthony J. Mitchell, et al. v. Reina S. Mendez

TOPICS

- personal injury
- summary judgment
- standard of review
- appellate procedure
- civil procedure

PRACTICE AREAS

personal injury

New York no-fault serious-injury threshold

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants established their prima facie entitlement to summary judgment by showing that Mendez did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. Whether the court needed to determine whether Mendez's opposition papers raised a triable issue of fact after defendants failed to meet their prima facie burden.

HOLDINGS

1. Defendants failed to meet their prima facie burden of showing that Mendez did not sustain a serious injury within the meaning of Insurance Law § 5102(d), because their submissions did not adequately address her claim under the 90/180-day category.
2. Because defendants failed to meet their prima facie burden, it was unnecessary to determine whether Mendez's opposition papers were sufficient to raise a triable issue of fact.

KEY QUOTATIONS

“Since the defendants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by Mendez in opposition were sufficient to raise a triable issue of fact” (125 A.D.3d at 618)

FACTUAL BACKGROUND

Mendez sought damages for personal injuries allegedly sustained in the subject accident. Her bill of particulars alleged that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d). Defendants moved for summary judgment, arguing that Mendez had not sustained a qualifying serious injury, but their submissions did not adequately address the 90/180-day claim.

PROCEDURAL HISTORY

The Supreme Court, Kings County, denied defendants' motion for summary judgment on the ground that Mendez did not sustain a serious injury under Insurance Law § 5102(d). The Appellate Division affirmed because defendants failed to establish their prima facie entitlement to judgment as a matter of law.

DISPOSITION

affirmed

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345
- Gaddy v. Eyler, 79 N.Y.2d 955, 956-957
- Che Hong Kim v. Kossoff, 90 A.D.3d 969

OPINION

PER CURIAM.

Mendez v Mitchell (2015 NY Slip Op 00855) Mendez v Mitchell 2015 NY Slip Op 00855 Decided on February 4, 2015 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 4, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

L. PRISCILLA HALL SHERI S. ROMAN JEFFREY A. COHEN BETSY BARROS, JJ. 2014-07867 (Index No. 8201/11) [*1]Reina S. Mendez, respondent, et al., plaintiff, vAnthony J. Mitchell, et al., appellants. Gallo Vitucci & Klar, LLP, New York, N.Y. (Kimberly A. Ricciardi of counsel), for appellants. William Schwitzer & Associates, P.C., New York, N.Y. (Andrea M. Arrigo of counsel), for respondent.

DECISION & ORDER In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Velasquez, J.), dated June 10, 2014, which denied their motion for summary judgment dismissing the complaint insofar as asserted by the plaintiff Reina S. Mendez on the ground that Mendez did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is affirmed, with costs. The defendants failed to meet their prima facie burden of showing that the plaintiff Reina S. Mendez did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (see *Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957).

The papers submitted by the defendants, inter alia, failed to adequately address Mendez's claim, set forth in the bill of particulars, that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) (see *Che Hong Kim v Kossoff*, 90 AD3d 969). Since the defendants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by Mendez in opposition were sufficient to raise a triable issue of fact (see *id.* at 969).

Therefore, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint insofar as asserted by Mendez. RIVERA, J.P., HALL, ROMAN, COHEN and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court