

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

Torres v. Rettaliata

2019 NY Slip Op 02578 (N.Y. Ct. App. 2019) · No. 2017-05014 · Decided April 3, 2019

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendants' motion for summary judgment in a personal-injury action arising from a motor vehicle accident. The court held that although the defendants established prima facie that the plaintiff did not sustain a serious injury under Insurance Law § 5102(d), the plaintiff raised triable issues of fact concerning injuries to her right shoulder and cervical and lumbar spine, and the defendants failed to establish lack of causation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Alan D. Scheinkman, P.J.; John M. Leventhal, J.; Francesca E. Connolly, J.; Valerie Brathwaite Nelson, J.
JURISDICTION	New York
DECIDED	April 3, 2019
DOCKET	2017-05014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment dismissing a personal-injury complaint under New York's serious-injury threshold statute.
STANDARD OF REVIEW	The court reviewed whether defendants were entitled to summary judgment as a matter of law and whether plaintiff raised a triable issue of fact concerning serious injury and causation.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Peter D. Rettaliata, et al. v. Carmen Torres

TOPICS

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

PRACTICE AREAS

personal injury

insurance

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie that Torres did not sustain a serious injury within the meaning of Insurance Law § 5102(d).
2. Whether Torres raised a triable issue of fact regarding serious injury to her right shoulder and cervical and lumbar spine under the permanent consequential limitation of use and significant limitation of use categories.
3. Whether defendants established prima facie a lack of causation so as to shift the burden to Torres to explain any gap in treatment.

HOLDINGS

1. Although defendants met their prima facie burden regarding the serious-injury categories, Torres raised a triable issue of fact concerning whether she sustained serious injuries to her right shoulder and cervical and lumbar spine; therefore, summary judgment dismissing the complaint was properly denied.
2. Because defendants failed to establish prima facie a lack of causation, the burden did not shift to Torres to raise a triable issue regarding causation or explain any gap in treatment.

FACTUAL BACKGROUND

Torres allegedly sustained injuries to her right shoulder and the cervical and lumbar regions of her spine in a motor vehicle accident. Defendants submitted medical evidence asserting that the injuries did not constitute serious injuries under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d). Torres submitted evidence raising a triable issue concerning those injuries, while defendants failed to establish prima facie that the injuries were not caused by the accident.

PROCEDURAL HISTORY

Carmen Torres commenced an action for personal injuries allegedly sustained in a motor vehicle accident. Defendants moved for summary judgment, arguing that Torres had not sustained a serious injury within the meaning of Insurance Law § 5102(d). The Supreme Court, Suffolk County, denied the motion, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- *Toure v. Avis Rent A Car Sys.*, 98 N.Y.2d 345 (2002)
- *Gaddy v. Eyler*, 79 N.Y.2d 955, 956-957 (1992)
- *Staff v. Yshua*, 59 A.D.3d 614 (2d Dep't 2009)

- Perl v. Meher, 18 N.Y.3d 208, 218-219 (2011)
- Sanclemente v. MTA Bus Co., 116 A.D.3d 688, 689 (2d Dep't 2014)
- Rodgers v. Duffy, 95 A.D.3d 864, 866 (2d Dep't 2012)
- Pommells v. Perez, 4 N.Y.3d 566, 572 (2005)
- Lambropoulos v. Gomez, 166 A.D.3d 952 (2d Dep't 2018)

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