

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D22049  
Y/nl

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Submitted - January 13, 2009

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
EDWARD D. CARNI  
WILLIAM E. McCARTHY, JJ.

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2008-08157

DECISION & ORDER

Sevastian Roules, respondent, v State Farm  
Insurance Companies, appellant, et al., defendant.

(Index No. 18262/06)

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Picciano & Scahill, P.C., Westbury, N.Y. (Gilbert J. Hardy of counsel), for appellant.

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., of counsel), for  
respondent.

In an action for a judgment declaring that the defendant State Farm Insurance Companies is obligated to defend and indemnify the defendant Jose A. Rodriguez in an underlying action entitled *Roules v Rodriguez*, pending in the Supreme Court, Queens County, under Index No. 12715/04, the defendant State Farm Insurance Companies appeals from an order of the Supreme Court, Queens County (Taylor, J.), dated August 4, 2008, which denied its motion for summary judgment.

ORDERED that the order is reversed, on the law, with costs, the motion of the defendant State Farm Insurance Companies for summary judgment is granted, and the matter is remitted to the Supreme Court, Queens County, for the entry of a judgment declaring that State Farm Insurance Companies is not obligated to defend or indemnify the defendant Jose A. Rodriguez in the underlying action.

Contrary to the determination of the Supreme Court, the timeliness of the disclaimer issued by the defendant State Farm Insurance Companies (hereinafter State Farm) did not present an issue of fact. State Farm made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating that only 13 days elapsed between the date that it first learned of the subject

February 10, 2009

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accident and the date that it issued its disclaimer of coverage on the ground of late notice. Moreover, during that 13-day interval, State Farm investigated the matter, reviewed its file, and unsuccessfully attempted to contact its insured. In response to this showing, the plaintiff failed to raise a triable issue of fact. Accordingly, State Farm's disclaimer was timely as a matter of law under the circumstances, and its motion for summary judgment should have been granted (*see generally Tully Constr. Co., Inc. v TIG Ins. Co.*, 43 AD3d 1150; *Matter of New York Cent. Mut. Fire Ins. Co. v Gonzalez*, 34 AD3d 816; *Schoenig v North Sea Ins. Co.*, 28 AD3d 462; *Blue Ridge Ins. Co. v Jiminez*, 7 AD3d 652).

Since this is a declaratory judgment action, the matter must be remitted to the Supreme Court, Queens County, for the entry of a judgment declaring that State Farm is not obligated to defend and indemnify the defendant Jose A. Rodriguez in an underlying action entitled *Roules v Rodriguez*, pending in the Supreme Court, Queens County, under Index No. 12715/04 (*see Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, 83, *cert denied* 371 U.S. 901).

RIVERA, J.P., MILLER, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court