

**State Farm Mut. Auto. Ins. Co. v Garda CL Atl. Inc.**

2016 NY Slip Op 33218(U)

September 1, 2016

Supreme Court, Rockland County

Docket Number: Index No. 030711/2015

Judge: Robert M. Berliner

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ROCKLAND  
HON. ROBERT M. BERLINER, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X  
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY a/o/o CHARMAINE  
B. GORDON,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 030711/2015

GARDA CL ATLANTIC INC. and LAZARO R.  
SUAREZ,

Defendants.

Motion Sequence #1

-----X

The following papers, numbered 1 to 4, were read in connection with Defendants' pre-answer motion to dismiss Plaintiff's complaint:

Notice of Motion/Affirmation in Support/Exhibits(A-F).....	1-2
Affirmation in Opposition/Exhibits(A-B).....	3
Reply Affirmation/Exhibits(A-C).....	4

Upon the foregoing papers, it is ORDERED that this motion is disposed of as follows:

Plaintiff commenced this subrogation action seeking reimbursement of \$9,850.53 in payments made on behalf of its insured, subrogor Charmaine B. Gordon, in connection with a May 31, 2012 motor vehicle accident. On this date, Gordon was operating a 2006 Volkswagen registered to Donald G. Thorkelson when it came into contact with a 2005 Ford truck operated by Lazaro R. Suarez and registered to Garda CL Atlantic Inc.. Gordon and Thorkelson commenced a personal injury action against Garda and Suarez in Supreme Court, Kings County, which was settled on or about March 12, 2014. In connection therewith, Gordon and Thorkelson executed a General Release of even date, which Defendants rely upon in support of their instant application.

Defendants maintain that dismissal is warranted based upon the General Release executed in the Kings County personal injury action, as such a release bars all claims by the insured's insurance carrier against that alleged tortfeasor. Defendants explain that Plaintiff enjoys no greater

rights than Gordon, who relinquished those rights and claims by executing the General Release, without reservation of rights to make additional claims. Defendants state further that they did not have any notice of any subrogation claim until August of 2015, almost a year and a half after the personal injury action had been settled.

In opposition, Plaintiff claims that Defendants' insurer, National Union Fire Insurance Company of Pittsburgh, P.A., (hereinafter "National") was aware of or should have been aware of its subrogation claim prior to making its settlement offer in the personal injury action. It submits a October 1, 2012 letter to "Gallagher And Bassett" at an address in Boca Raton, Florida in which it notifies National of its subrogation claim and requests its cooperation in settling the matter.

In reply, Defendants' explain that although Gallagher Bassett is its third party administrator and provided such services regarding liability claims against Garda and Suarez, the October 1, 2012 letter was addressed to "Gallagher And Bassett" and, more significantly, Gallagher Bassett did not maintain an office at the Boca Raton, Florida address where the letter was sent.

"When an insured executes a general release in favor of a tortfeasor without reserving the rights of his or her insurer, the insured impairs the insurer's right of subrogation" *Progressive Ins. Co. v Sheri Torah, Inc.*, 44 AD3d 837, 838 [2d Dept 2007]. However, "a release given to a tortfeasor who has knowledge of the insurer's right will not preclude the insurer from enforcing its right of subrogation against the wrongdoer" *Silinsky v State-Wide Ins. Co.*, 30 AD2d 1 [1968].

Plaintiff's allegations that Defendants had actual notice of their subrogation claim via the October 1, 2012 is unavailing, as it was addressed to an address unrelated to Gallagher Bassett at the time and its senior resolution manager, Monique Davis, stated in her affidavit that she conducted a search of Gallagher Bassett files and confirmed that there is no record of notice from State Farm of a subrogation claim. As such, Plaintiff may not maintain its claims against Defendants in light of the March 12, 2014 General Release executed in connection with the resolution of the Kings County personal injury action. Accordingly, Defendants' motion to dismiss pursuant to CPLR §3211(a)(5) based upon the March 12, 2014 General Release is granted.

The foregoing constitutes the Decision and Order of the Court.

Dated: New City, New York  
September 1, 2016

ENTER

  
HON. ROBERT M. BERLINER, J.S.C.

To:

The Law Office of David S. Klausner PLLC  
Law Offices of Stuart D. Markowitz, P.C.