

Global Liberty Ins. Co. v Brown
2019 NY Slip Op 33243(U)
October 9, 2019
Supreme Court, Bromx County
Docket Number: 24661/2016E
Judge: Franco
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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 OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 26

GLOBAL LIBERTY INS. CO.,

Index No. 24661/2016E

Plaintiff,

-against-

**MEMORANDUM
DECISION/ORDER**

DANIEL BROWN
DAQUEL HOLME
RALPH INNOVATIVE MEDICAL, P.C.
HAMZA PHYSICAL THERAPY PLLC
BRONX CHIROPRACTIC REHABILITATION, P.C.
GC CHIROPRACTIC, P.C.
MASTER CHENG ACUPUNCTURE, P.C.
KSENIA PAVLOVA, P.C.
SR WELLNESS PT, P.C.
LLJ THERAPEUTIC SERVICES, P.C.
JULES FRANCOIS PARISIEN, MD
LONGEVITY MEDICAL SUPPLY, INC.
NOEL E. BLACKMAN, M.D.
DAMADIAN MRI IN CANARSIE, P.C.
BRUCE M. JACOBSON, DC, PC
CONEY ISLAND MEDICAL PRACTICE PLAN, P.C.
MEDISURG P.C.
TOTAL PSYCHIATRIC MEDICAL SERVICES, P.C.
ACCELERATED SURGICAL CENTER OF NORTH
JERSEY, LLC
AXIAL CHIROPRACTIC, PC
BARNERT SURGICAL CENTER LLC
ADVANCED ORTHOPEDICS & JOINT
PRESERVATION, P.C.
LENCO DIAGNOSTIC LABORATORIES, INC.
INTERMED CARE, P.C.

Defendants.

Rubén Franco, J.

Plaintiff moves for summary judgment (CPLR 3212) against defendant medical providers Jules Francois Parisien, MD and Noel E. Blackman, M.D. (provider defendants), assignees of

Daniel Brown and Daquel Holme* (defendants), seeking a determination that provider defendants are not entitled to reimbursement for medical services rendered to defendants' assignors for alleged injuries sustained in a motor vehicle accident.

The facts, as culled from the pleadings, affidavits and exhibits submitted with the instant motion, are as follows: On January 19, 2015, defendants Brown and Holme were involved in a motor vehicle accident, when the livery car in which they were passengers was struck by another vehicle, a Plymouth Voyager (Voyager), which fled the scene. The livery car was operated by Callistus Uzosike (Uzosike), owned by Traore Abou (Abou), and insured by plaintiff. The Voyager, owned by Issifou Traore, had been reported stolen prior to the incident. Defendants Brown and Holme sought medical treatment in connection with the accident, and assigned their rights to various medical providers, including provider defendants, which submitted no-fault billing claims to plaintiff.

Plaintiff alleges that defendants staged the accident based upon an investigation conducted by John Stewart (Stewart), an agent associated with plaintiff. Uzosike, the driver of the livery vehicle, submitted recorded statements and an affidavit attesting that, prior to hailing him, he observed defendants near the Voyager, which was idling in the vicinity. Uzosike stated that shortly after defendants entered his car and after driving a few blocks, the Voyager sideswiped his vehicle. Both vehicles pulled over, with the Voyager parking in front, at which time it suddenly reversed and made contact at a high rate of speed with Uzosike's vehicle, before fleeing the scene. Uzosike attempted to take photographs of the Voyager with his cell phone. When he sought to elicit defendants' aid in taking pictures, he asked if they had observed the incident, so they could act as his witnesses. Uzosike states that defendants immediately claimed that they were both injured,

* Defendant's name is spelled Holme and Holmes in various submissions

that he should call the police, and that they had not seen anything. Uzosike gave chase, with defendants still in the vehicle, finding the Voyager abandoned a short distance away, at which time he called the police and took additional photos. He alleges that from defendants' behavior, he knew they were involved, and informed them that he was aware the accident had been staged and that he would ensure they were arrested for their part in it. When the police arrived, neither defendant sought medical treatment at that time.

Claims agents attempted to contact Abou, the owner of the insured vehicle, but were unable to do so because the telephone number provided had been disconnected. An agent was able to reach a next of kin, who was described as being "evasive" during the conversation. The individual stated that Abou would call back, which never occurred. Stewart, the investigator, went to the home address recorded on Abou's insurance but was unable to locate anyone. A database search revealed that Abou has utilized eleven addresses simultaneously and "almost directly overlapping in time" within a ten-year time span. While ultimately never speaking with Abou, Stewart did successfully arrange meetings with the livery driver, Uzosike, who provided statements expressing his certainty that the incident was intentional, that defendants were party to the staging, that they did not seek medical attention at the scene and adopted a "subdued" manner due to their fear of being arrested. Based on the gathered evidence, Stewart determined that the accident met the company's fraud bureau criteria and had been staged. In an arbitration case between plaintiff and defendants relating to billing submitted by another defendant medical provider, the arbitrator denied the insurance claim, finding that the accident had been staged.

Summary judgment is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*see Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]) ["It is axiomatic that summary judgment is a drastic remedy and should not be

granted where there is any doubt as to the existence of factual issues (*Millerton Agway Coop. v Briarcliff Farms*, 17 NY2d 57, 61 [1966], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). A party moving for summary judgment must show a *prima facie* entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Friends of Thayer Lake LLC v Brown.*, 27 NY3d 1039, 1043 [2016]; *Pokoik v Pokoik*, 115 AD3d 428 [1st Dept 2014]; CPLR 3212 [b]). To defeat summary judgment, the party opposing the motion has to show that there exists a material question of fact that requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]; see *Hoover v New Holland N. Am., Inc.*, 23 NY3d 41, 56 [2014]). In deciding a motion for summary judgment, the court should interpret the evidence in a manner that most favors the party opposing the motion (see *Kershaw v Hospital for Special Surgery, supra*).

In opposition to the motion, provider defendants claim plaintiff has failed to produce evidence in admissible form to demonstrate that the incident was staged or intentional. They assert that plaintiff must establish proof of fraud by clear and convincing evidence; that it failed to do so in relying upon “highly speculative allegations and hyperbole,” particularly the “affidavit of James Dunn [and] ... Mr. Dunn's personal opinions, none of which have been shown to be admissible or reliable;” (Defendants Affirmation in Opposition ¶¶ 18-20) and, that substantial discovery remains outstanding.

In *Am. Alternative Ins. Corp. v Washington* (60 Misc3d 1222[A] [Sup Ct, NY County 2018]), the court explained that

[a]n insurer may disclaim all insurance coverage based upon “the fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v. Chubb Grp. of Ins. Co.*, 90 NY2d 195, 199 [1997]). In meeting this burden, a No-Fault insurer is “not required to establish that the subject collision was the

product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence” (*V.S. Med. Servs., P.C. v. Allstate Ins. Co.*, 25 Misc 3d 39, 41 [App Term, 2d Dept 2009] [internal citation omitted]). Rather, the No-Fault insurer must demonstrate the facts elicited during an investigation that make up the founded belief. Circumstantial evidence is sufficient to prove such facts if a party's conduct “may be ‘reasonably inferred’ based upon ‘logical inferences to be drawn from the evidence’” (*Benzaken v. Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005] [citation omitted]).

(See *Liberty Mut. Ins. Co. v Young*, 124 AD3d 663, 664 [2nd Dept 2015].)

It is well settled that “a deliberate collision by an insured is not a covered event under an insurance policy” (*Liberty Mut. Ins. Co. v Young*, 124 AD3d at 664; see *State Farm Mut. Auto. Ins. Co. v Laguerre*, 305 AD2d 490, 491 [2nd Dept 2003]). In this action, there is no affidavit from a “James Dunn.” There is an affidavit from Stewart, who was the actual investigator of this incident, and thus, a significant portion of his findings are based on personal knowledge rather than merely a review of the file. An additional affidavit, from the driver of the insured vehicle, indicates the suspicious nature of the incident. The evidence further reflects defendant assignors’ contradictory and inconsistent EUO statements regarding what transpired leading up to and following the accident. Defendants provided multiple, differing addresses to the police and in their claim forms, one of which is a common address, yet defendant Brown denied living there at his EUO.

Provider defendants have not offered, to the court’s satisfaction, any arguments sufficient to establish a material question of fact such that summary judgment should be denied. Their claim that summary judgment would be premature because there are still matters for discovery is unsubstantiated. “CPLR 3212(f) permits a party opposing summary judgment to obtain further discovery when it appears that facts supporting the position of the opposing party exist but cannot be stated” (*Juseinoski v New York Hosp. Med. Ctr. of Queens*, 29 AD3d 636, 637 [2nd Dept 2006]; see *Glob. Minerals and Metals Corp. v Holme*, 35 AD3d 93, 102-03 [1st Dept 2006]). This is

particularly the case where the opposing party has not had a reasonable opportunity for disclosure prior to the motion (*see Glob. Minerals and Metals Corp. v Holme* 35 AD3d at 102-03; *Aurora Loan Servs., LLC v LaMattina & Assocs., Inc.*, 59 AD3d 578 [2nd Dept 2009]). Here, provider defendants have not indicated what evidence they could come upon through discovery that could help overcome the fact that the “logical inferences to be drawn from the evidence” are that this was a staged accident. (*Am. Alternative Ins. Corp. v Washington* (60 Misc3d 1222[A] quoting *Benzaken v. Verizon Communications, Inc.*, 21 AD3d 864, 865 [2nd Dept 2005]; *see Atomergic Chemetals Corp. v Hartford Acc. and Indem. Co.*, 193 AD2d 551, 551 [1st Dept 1993]).

The court finds that plaintiff has established entitlement to judgment as a matter of law by tendering admissible evidence demonstrating that the accident was the product of a staged collision, thereby vitiating plaintiff’s obligation to provide coverage (*see V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc3d 39, 40–41 [2nd Dept 2009]).

Accordingly, plaintiff’s motion for summary judgment against Jules Francois Parisien, MD and Noel E. Blackman, M.D., is granted; these provider defendants are not entitled to no-fault coverage.

This constitutes the Decision and Order of the court.

Dated: October 8, 2019



Rubén Franco, J.S.C.

HON. RUBÉN FRANCO