

**State Farm Mut. Auto. Ins. Co. v Able Chiropractic,  
P.C.**

2023 NY Slip Op 33579(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 153544/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LESLIE A. STROTH PART 12**

*Justice*

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STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY,

Plaintiff,

INDEX NO. 153544/2021

MOTION DATE 03/17/2023

MOTION SEQ. NO. 002

- v -

ABLE CHIROPRACTIC, P.C., MEDNAVET, INC., ECLIPSE  
MEDICAL IMAGING, P.C., APEX MEDICAL, P.C., NYC  
CARE PT, P.C., W J WELLNESS ACUPUNCTURE,  
P.C., COMPLETE EXPRESS MEDICAL, P.C., FULL  
PSYCHOLOGY, P.C., AUSTIN WELLNESS RX,  
INC., METRO PAIN SPECIALISTS PROFESSIONAL  
CORPORATION, NEIGHBORHOOD PHYSICAL THERAPY,  
P.C., PROSPECT CHIROPRACTIC, PLLC, BV PHYSICAL  
THERAPY, P.C., NEW AGE MEDICAL, P.C., GYSAKA  
SERVICES, INC., VINCENT S. DOWLING, M.D., BIG  
APPLE MEDICAL GROUP CORP., DSH PHYSICAL  
THERAPY SERVICES, P.C., LENCO DIAGNOSTIC  
LABORATORIES, INC., BERGENFIELD SURGICAL  
CENTER, LLC, PMR MEDICAL, P.C., ERF PHYSICAL  
THERAPY, P.C., PREMIER ANESTHESIA ASSOCIATES,  
PA, SCOB, LLC, EAST COAST MEDICAL CARE,  
P.C., JOHN STREET PHARMACY, LLC, HP MEDICAL  
CARE, P.C., MICHELE GLISPY, LAC., MORI FOWLER-  
IDLETT, LERONE IDLETT, TOPLAB, ADVANCED  
COMPREHENSIVE LABORATORY, LLC D/B/A TOPLAB,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 002) 115, 116, 117, 118,  
119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff commenced this action seeking a declaratory judgment that it owes no duty to pay the  
claims of the defendants seeking to collect no fault benefits on behalf of Mori Fowler-Idlett and Lerone  
Idlett (together, the insured) with respect to two collisions – one on August 19, 2020, and the other on  
September 7, 2020.

By notice of motion, plaintiff moves for an order granting it summary judgment against the following defendants: Full Psychology, P.C.; Metro Pain Specialists Professional Corporation, Neighborhood Physical Therapy, P.C.; Prospect Chiropractic, P.C.; Gysaka Services Inc.; Big Apple Medical Group Corp.; ERF Physical Therapy, P.C.; Premier Anesthesia Associates, PA, SCOB, LLC; East Coast Medical Care, P.C.; and Michele Glispy, LAC (together, answering defendants).

Plaintiff argues that for both dates of loss, the insured violated the no fault regulations by materially misrepresenting their residence location and the primary garage location of the insured vehicle when the policy was procured. Specifically, plaintiff asserts that the insured misrepresented that they lived and garaged the subject vehicle in Buffalo, New York, while actually primarily residing and garaging the vehicle in Queens, New York.

Although defendants Full Psychology, P.C.; Metro Pain Specialists Professional Corporation, Big Apple Medical Group Corp.; ERF Physical Therapy, P.C. and Michele Glispy, LAC (together, opposing defendants) collectively attempted to file an opposition to the motion, such opposition was incorrectly filed and is not considered.<sup>1</sup>

It is a well-established principle that the “function of summary judgment is issue finding, not issue determination.” *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989), quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *see also Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). “Once this showing has been

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<sup>1</sup> Nevertheless, the Court notes that, even if it were to consider opposing defendants’ opposition, it would be insufficient. Opposing counsel’s affirmation, coming from an individual without personal knowledge, has no probative value. In any event, counsel’s affirmation creates no material issue of fact for trial. *See GTF Marketing Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 (1985). Further, the exhibits submitted by counsel, which constitute caselaw and discovery demands, do not remedy the defect.

made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986); citing *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

In the context of no fault, insurers may assert material misrepresentations in the procurement of the policy as a defense against a party involved in the misrepresentation in the policy’s procurement. *See Matter of Ins. Co. of N. Am. v Kaplun*, 274 AD2d 293, 298 (2d Dept 2000). No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. *See Insurance Law § 3105 (b)*. A misrepresentation is material if knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract. *See Piller v Otsego Mut. Fire Ins. Co.*, 164 AD3d 534, 536 (2d Dept 2018). Misrepresentation of an insured’s address to procure automobile insurance is material. *See Williams v Janvier*, 176 AD3d 1139, 1142 (2d Dept 2019).

The subject policy was issued upon the representation that the insured resided at the vehicle was to be garaged at 80 Eckhert Street, Buffalo, New York 14207. In support of its motion, plaintiff submits an affidavit of Carolyn Upshaw-Ellis, a claims specialist for the plaintiffs, that establishes that the policy address was in Buffalo, New York. In their examinations under oath, the insureds admitted that, at the time they procured the policy, they resided at a Queens, New York address and have only ever garaged the insured vehicle in Queens. Plaintiff also submits the affidavit of Lee Bottari, an employee in the plaintiff’s underwriting department, who states that plaintiff would not have issued the subject policy to the insureds under the same terms or conditions had it been aware that the insured’s vehicle was being garaged in Queens, New York as opposed to the address in Buffalo, New York.

As their misrepresentations represent a violation of the no-fault law and its regulations, plaintiff establishes that defendants are not entitled to no fault benefits for the purported accidents on August 19,

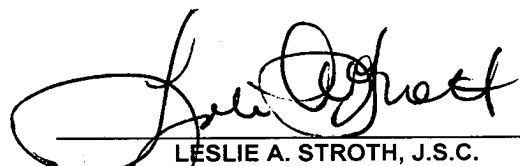
2020, and the other on September 7, 2020. See *Maria S. Masigla, P.T. v Omni Indem. Co.*, 64 Misc 3d 147(A) (App Term, 2d Dept, 2d 11th and 13th Jud Dists 2019) (provider not entitled to be paid no-fault benefits as insured misrepresented insurance policy address). The Court notes that plaintiff will leave the policy active for any innocent third parties to collect benefits from it, as permitted under the no-fault regulations. Given plaintiff's entitlement to a default judgment, the Court need not reach its arguments in the alternative seeking the same relief.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment against Full Psychology, P.C.; Metro Pain Specialists Professional Corporation, Neighborhood Physical Therapy, P.C.; Prospect Chiropractic, P.C.; Gysaka Services Inc.; Big Apple Medical Group Corp.; ERF Physical Therapy, P.C.; Premier Anesthesia Associates, PA, SCOB, LLC; East Coast Medical Care, P.C.; and Michele Glispy, LAC is granted; and it is further

ORDERED that, within 30 days of the date of this order, plaintiff is directed to submit a proposed order and judgment in accordance with this decision via NYSCEF with a courtesy copy e-mailed to [riwohl@nycourts.gov](mailto:riwohl@nycourts.gov). and [sfc-part12-clerk@nycourts.gov](mailto:sfc-part12-clerk@nycourts.gov).

The foregoing constitutes the decision and order of the Court.

  
LESLIE A. STROTH, J.S.C.

10/11/2023  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input checked="" type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: