

**State Farm Mut. Auto. Ins. Co. v Quality Orthopedic  
& Complete Joint Care, P.C.**

2023 NY Slip Op 34867(U)

September 20, 2023

Supreme Court, New York County

Docket Number: Index No. 159767/2021

Judge: Lisa S. Headley

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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. LISA S. HEADLEY PART 28M

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 159767/2021

MOTION DATE 08/10/2023

MOTION SEQ. NO. 002

- v -

QUALITY ORTHOPEDIC AND COMPLETE JOINT CARE, P.C., DONALD C. WALLERSON, M.D., PLLC, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, LENCO DIAGNOSTIC LABORATORIES, INC., ALL CITY FAMILY HEALTHCARE CENTER, INC., TROMBMED NY, INC., MAZ SUPPLY, INC., HEALTH EAST MEDICAL ALLIANCE, LLC, WISE REHAB P.T., P.C., B. SOLIMAN CHIROPRACTIC, P.C., RO MEDICAL CARE, P.C., WESTCHESTER RADIOLOGY & IMAGING, P.C., BP DYNAMIC REHAB PT, P.C., TIME TO CARE PHARMACY, INC., OPEN ACUPUNCTURE, P.C., G.M. WELLNESS MEDICAL, P.C., CMA PSYCHOLOGY, P.C., NEMAAN GHUMAN, D.P.M., JIN CARE PHYSICAL THERAPY, P.C., LEE ACUPUNCTURE, P.C., CUSTOM RX PHARMACY, LLC, GARA MEDICAL CARE, P.C., JOSEPH A. RAIA, M.D., P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, RIGHT CHOICE SUPPLY, INC., ORTHO CITY SERVICES, INC., NYNY PHYSICAL THERAPY, P.C., CAVALLARO MEDICAL SUPPLY, INC., T & D MEDICAL SUPPLIES, INC., METROPOLITAN MEDICAL & SURGICAL, P.C., ELIZABETH GUZMAN, JOSE MORALES, MARIA GARCIA

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff, State Farm Mutual Automobile Insurance Company, ("State Farm/ Plaintiff") filed the instant motion seeking an Order, pursuant to CPLR §3212, granting Plaintiff leave to enter summary judgment against defendants: (1) All City Family Healthcare Center, Inc.; (2) Wise Rehab P.T., P.C.; (3) B. Solman Chiropractic, P.C.; (4) Westchester Radiology & Imaging, P.C.; (5) CMA Psychology; (6) Metro Pain Specialists Professional Corporation; and (7) Cavallaro Medical Supply, Inc., (hereinafter collectively referred to as "Medical Provider Defendants"). Medical Provider Defendants filed opposition to the motion.

### Background

This action arises from an alleged collision that occurred on or about January 28, 2020, in Bronx, New York involving the insured driver, Elizabeth Guzman (“Insured driver”), who was driving a 2018 Kia Forte (“Insured Vehicle”). The Insured driver claims that the adverse vehicle left the scene of the collision, and there is no statement from the adverse driver. The Insured Vehicle was insured by Plaintiff, State Farm. The claimants, Jose Morales (“Mr. Morales”) and Maria Garcia (“Ms. Garcia”) (hereinafter collectively referred to as “Claimants”), were allegedly passengers in the Insured Vehicle at the time of the collision. The Insured driver Guzman alleges at the time of the collision, she was stopped at a light when an adverse vehicle approached the right side of the Insured Vehicle, and made a left turn striking the front right side of the Insured Vehicle which caused damage to the Insured Vehicle. The Insured driver and the Claimants allege that they have suffered injuries as a result of the collision.

### Plaintiff’s Motion for Summary Judgment

In the instant motion, Plaintiff argues, *inter alia*, that the injuries sustained to the Insured driver and Claimants were not caused by the subject collision involving the Insured Vehicle on the basis that the Insured driver and Claimants made material misrepresentations in submission of the claim, and the Insured driver and Claimants failed to return a subscribed copy of their examination under oath (“EUO”) transcripts.

In support of the motion, Plaintiff submits, *inter alia*, the affidavit of Denise Avallon, the Claim Specialist employed by State Farm. Ms. Avallon was assigned to review the claim file for the Insured driver and the Claimants. Ms. Avallon determined the loss was not covered as an insured accident because the Insured driver and Claimants submitted material misrepresentations in the claim. Ms. Avallon determined there were contradictions in the applications submitted in support of the claim and in the police report statement made at the scene of the incident. For example, Claimant Morales did not report any injuries at the scene and there was no visible injuries and Morales refused medical attention. The police report also states the collision was very minor and resulted in minimal damages, and the airbags did not deploy, and the vehicles was drivable at the scene. However, the Claimants have made a claim with State Farm that they suffered injuries in the collision. Ms. Avallon also states that there was a significant prior history of losses involving the Insured Vehicle, the Insured driver and/or the Claimants for several years, including in 2020, 2019, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010 and 2008, which is a factor for the Claimants ineligibility in obtaining No-Fault benefit coverage. Based on Ms. Avallon’s review of the file and investigation, State Farm determined that the Claimants were not occupants of the Insured Vehicle at the time of the alleged collision and their injuries were not caused by the collision.

Additionally, Plaintiff asserts the Insured driver and Claimants’ failure to subscribe and return EUO transcripts is a violation of a condition precedent to coverage. Therefore, the Plaintiff has duly denied all claims of the insured driver, the Claimants, and the Medical Provider Defendants based on their failures to return subscribed copies of their EUO transcripts.

### Medical Provider Defendants’ Affirmation in Opposition

In opposition, the Medical Provider Defendants argue, *inter alia*, that Plaintiff failed to provide support in the record that the accident was intentional, and that a fraud was committed. The Medical Provider Defendants also argue Plaintiff failed to demonstrate compliance with the No-Fault Regulations since Plaintiff failed to pay a claim or issue a denial within thirty (30) days

of receipt of proof of the claim pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.8. They also argue that Plaintiff failed to comply with the timeframes for requesting verification of a claim pursuant to N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.5, and failed to prove the merits of the “EUO No-Show Defense” by failing to establish Plaintiff had good reasons to request an EUO pursuant N.Y. Comp. Codes R. & Regs. tit. 11, 65-3.2(c). Moreover, they claim Plaintiff failed to satisfy the standards for summary judgment by not providing support in the record that the accident was intentional, and that the summary judgment motion is premature as there has not been adequate time for discovery. Therefore, the Plaintiff’s motion for summary judgment should be denied.

**Discussion**

Under CPLR §3212, “[o]n a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party’s meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action.” *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012) [internal citations and quotation marks omitted].

Here, this Court finds that discovery is outstanding based on the arguments presented in the defendants’ opposition. Further, the defendants raise issues of fact as to whether the accident was intentional in nature or whether a fraud was committed. In addition, the defendants raise issues of fact pertaining to whether the Plaintiffs failed to pay a claim or issue a denial within thirty (30) days of receipt of proof of the claim; whether Plaintiff failed to comply with the timeframes for requesting verification of a claim; and whether Plaintiff failed to establish good reasons to request an EUO. Therefore, plaintiff’s motion for summary judgment must be denied.

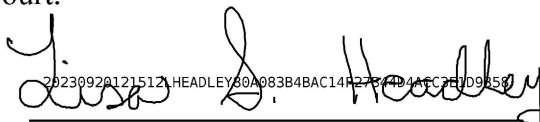
Accordingly, it is hereby

**ORDERED** that the branch of State Farm Fire & Casualty Company’s motion under CPLR §3212 seeking summary judgment in its favor is DENIED as to defendants (1) All City Family Healthcare Center, Inc., (2) Wise Rehab P.T., P.C., (3) B. Solman Chiropractic, P.C., (4) Westchester Radiology & Imaging, P.C., (5) CMA Psychology, (6) Metro Pain Specialists Professional Corporation, and (7) Cavallaro Medical Supply, Inc., and it is further

**ORDERED** that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

**ORDERED** that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon the defendants with notice of entry.

This constitutes the Decision and Order of the Court.

  
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LISA S. HEADLEY, J.S.C.

9/20/2023  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: