

State Farm Fire & Cas. Co. v Grand Med. Supply Corp.

2024 NY Slip Op 33199(U)

September 12, 2024

Supreme Court, New York County

Docket Number: Index No. 157451/2021

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

GRAND MEDICAL SUPPLY CORP., BLVD
CHIROPRACTIC OF NY, P.C. A/K/A BLVD
CHIROPRACTIC, DR. OFFENBACHER MEDICAL
IMAGING, PLLC, M EL SAYED PHYSICAL THERAPY,
P.C., TIME TO CARE PHARMACY, INC., ZUCCO WELL
ACUPUNCTURE, P.C., INTEGRATIVE FAMILY HEALTH
NP, PLLC, ATTIA REHABILITATION PT,
P.C., METROPOLITAN MEDICAL & SURGICAL,
P.C., ARCHER LEWIS CHIROPRACTIC, P.C., RAMZAN
CHIROPRACTIC, P.C., SEDATION VACATION
PERIOPERATIVE MEDICINE, PLLC, ALL CITY FAMILY
HEALTHCARE CENTER, INC., SOUTH SHORE
OSTEOPATHIC MEDICINE, P.C., LENCO DIAGNOSTIC
LABORATORIES, INC., HEAL IT MEDICAL SUPPLY,
INC., COMPREHENSIVE MEDICAL ASSIST, P.C., MAZ
SUPPLY, INC., BAY RIDGE ORTHOPEDIC ASSOCIATES,
P.C., TROMBMED NY, INC. A/K/A TROMBMED, YVGENIY
MARGULIS, PHD, COMPREHENSIVE PSYCHOLOGICAL
EVALUATION, P.C. A/K/A COMPREHENSIVE
PSYCHOLOGICAL, P.C., MICHAEL YURYEV, D.O., RIGHT
CHOICE SUPPLY, INC., ATLANTIC DIAGNOSTIC, LLC, AVK
RX, INC. A/K/A AVK RX PHARMACY, ALLURE
RECOVERY, INC., ADA TSARNAS, LCSW, JAMES LUKE,
JAMIR MILLER, MICHAEL RAMOS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for JUDGMENT - SUMMARY.

**DECISION + ORDER ON
MOTION**

Plaintiff's motion for summary judgment is denied.

Background

In this no-fault action, plaintiff seeks declaratory relief that it need not pay or honor any claims arising out of an accident involving defendants Luke, Miller, and Ramos. Plaintiff contends that defendant Luke procured insurance for the subject vehicle and was driving when his car was allegedly t-boned in Brooklyn on April 12, 2020. Defendants Miller and Ramos were purportedly passengers when this accident occurred. Plaintiff emphasizes that there was no police report for the accident.

Plaintiff observes that it has received over \$100,000 in medical bills from the medical provider defendants. It claims it commenced an investigation because defendant Luke was involved in a prior accident with what plaintiff deemed to be excessive and questionable medical treatment. Plaintiff also contends that the subject vehicle is a town car, a common livery vehicle, and that this car was previously registered as a taxi. It suspects that this was an intentional act and so plaintiff sought EUOs. Plaintiff seeks summary judgment on the ground that defendants Luke, Miller and Ramos failed to appear for their EUOs. It maintains that these EUOs were all timely requested.

In opposition, defendants Time to Care Pharmacy, Inc., Integrative Family Health NP, Heal It Medical Supply, Inc., Yevgeniy Margulis, PHD, Comprehensive Psychological Evaluation, P.C. a/k/a Comprehensive Psychological, P.C., and Allure Recovery, Inc. argue that there was no reasonable basis for an EUO. They also claim it is unclear who at plaintiff requested the investigation and that plaintiff did not establish that injured defendants failed to appear for the EUOs.

Defendant Right Choice Supply, Inc. also offers opposition and makes similar arguments. It questions the sufficiency of plaintiff's prima facie showing and that plaintiff did not have an adequate basis to request EUOs.

Plaintiff did not submit a reply.

Discussion

The Court denies the motion because there are issues of fact surrounding the basis for plaintiff's EUO requests. Simply put, plaintiff did not adequately substantiate the need for EUOs with admissible evidence. As an initial matter, the notice of motion only references an attorney's affirmation; of course, that is not sufficient to support a motion for summary judgment.

Plaintiff also included, as an exhibit, an affidavit from Andrea Hutchinson that was submitted in connection with plaintiff's prior default judgment motion. Defendants correctly argue that this affidavit does not properly substantiate plaintiff's purported justifications for commencing an investigation into the loss at issue (NYSCEF Doc. No. 92, ¶ 25). Ms. Hutchinson contends that there were two prior claims on the policy from 2018 but these claims are not included in the motion. Nor did she explain how having two prior claims means that the instant claim is "an intentional act."


She also claims that the insured vehicle used to be registered as a taxi but does not submit any proof of that or explain why that might justify an investigation. And, finally, Ms. Hutchinson observes that defendant Ramos was in a prior collision in January 2013. No proof of that incident is included nor did Ms. Hutchinson opine about why this might justify the investigation here. The fact that Ramos may have been in a single prior accident is not a reason to believe any subsequent claim is fraud. Moreover, as defendants point out, Ms. Hutchinson does not provide

any details about who, specifically, commenced the investigation. She merely insists that plaintiff did.

And, despite defendants raising these issues of fact in opposition, plaintiff did not bother to reply to specifically address the reasons why it started an investigation and include proof (such as documents about prior claims) to justify its conclusion. It is not this Court’s role to review plaintiff’s moving papers and make arguments on plaintiff’s behalf that address defendants’ objections.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is denied.

9/12/2024		
DATE		ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE