

State Farm Fire & Cas. Co. v Aviles

2025 NY Slip Op 30821(U)

March 13, 2025

Supreme Court, New York County

Docket Number: Index No. 154496/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 154496/2023

STATE FARM FIRE AND CASUALTY COMPANY,

MOTION DATE 12/10/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

LYDIA AVILES, 63RD RX CORP, ALL BORO MEDICAL P.C., ALL CITY FAMILY HEALTHCARE CENTER, INC., AVISO SUPPLY INC., BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C., BL PAIN MANAGEMENT PLLC, DURAMED CARE, INC, ECHENIQUE MEDICAL OFFICE, P.C., FUNCTIONAL REHABILITATION MEDICINE P.C., GAMMA PHYSICAL THERAPY, PLLC, GLOBAL TECH DIAGNOSTIC INC., INTRA-OPERATIVE MONITORING SOLUTIONS, INC., LAKE SUCCESS NEUROLOGICAL SURGERY PC, MDCA PSYCHOLOGY CARE P.C., MEDICAMENTE SUPPLY CORP, METRO CHEMISTS PHARMACY INC., OLGA GIBBONS, QUALITY HEALTH CARE MGT. INC., MICHAEL YURYEV, PROMPT MEDICAL SPINE CARE, PLLC, QUEENS TOWER SUPPLY INC., RED MEDICAL SUPPLY, INC., REHAB CONCEPTS PHYSICAL THERAPY P.C., SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SOUTH SHORE OSTEOPATHIC MEDICINE, P.C., STAND-UP MRI OF THE BRONX P.C., UNION SCRIPTS LLC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

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

Upon the foregoing documents, and after a final submission date of January 7, 2025, Plaintiff State Farm Fire & Casualty Company’s (“Plaintiff”) motion for summary judgment against Defendants All City Family Healthcare Center, Inc., BL Pain Management PLLC, and MDCA Psychology Care based on their assignor, Defendant Lydia Aviles’ (“Aviles”) failure to appear for examinations under oath (“EUO”) is granted in accordance with the annexed order dated March 13, 2025.

I. Background

Plaintiff issued an automobile insurance policy to non-party Carlos Carrion (“Carrion”) insuring a 2005 Honda Pilot (the “Insured Auto”). Aviles was allegedly driving the Insured Auto on June 24, 2022, when she was involved in a motor vehicle accident with a phantom vehicle. Police were not called at the time of the accident, and Aviles reported the accident five days later on June 29, 2022 (NYSCEF Doc. 50). Aviles and Carrion were involved in another accident one month prior on May 28, 2022. Aviles allegedly began receiving medical treatment related to the June 24, 2022 accident, and medical providers began billing Plaintiff for the treatment as early as August 5, 2022. After receiving those bills, Plaintiff requested Aviles appear for an EUO on September 9, 2022, but she failed to appear. Plaintiff requested Aviles appear for an EUO on October 4, 2022, but she again failed to appear. Based on Plaintiff’s failure to appear for two EUOs, Plaintiff disclaimed coverage and initiated this action seeking a declaratory judgment that no coverage exists for the June 24, 2022 accident.

Multiple defendants have settled, been defaulted, or have not been located for service. The only remaining active defendants are Defendants All City Family Healthcare Center, Inc., BL Pain Management PLLC, and MDCA Psychology Care (“Opposing Defendants”). Plaintiff now seeks summary judgment against the Opposing Defendants.

II. Discussion

“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” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]).

Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]).

Plaintiff's motion for summary judgment is granted. It is well established that the failure to appear for two timely requested EUOs "is a breach of a condition precedent to coverage and voids the policy ab initio" (*Unitrin Advantage Ins. Co. v Dowd*, 194 AD3d 507, 507 [1st Dept 2021] citing *Hertz Vehicles, LLC v Alluri*, 171 AD3d 432 [1st Dept 2019]). The bar to coverage also applies to assignees of an insured (*Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559, 560 [1st Dept 2011]).

Here, an EUO request was mailed to Aviles just three days after receiving Aviles' bill for treatment with Defendant Rehab Concepts Physical Therapy, PC on August 5, 2022, making the request timely (*see also Unitrin Direct Ins. Co. v Beckles*, 188 AD3d 620, 621 [1st Dept 2020]). The failure to appear at two timely requested EUOs vitiated the policy and allows Plaintiff to disclaim coverage for outstanding medical bills from treating providers and further obligations (*see also State Farm Mut. Auto. Ins. Co., v Equinox Physical Therapy, P.C.*, 231 AD3d 604 [1st Dept 2024]).

The Opposing Defendants' arguments that the EUO requests were untimely are contrary to First Department precedent and insufficient to defeat Plaintiff's motion (*see Unitrin Advantage Ins. Co. v Dowd*, 194 AD3d 507, 507 [1st Dept 2021]). Nor do the Opposing Defendants' arguments about the need for discovery preclude summary judgment as they fail to provide an affidavit from any individual with personal knowledge of the facts underlying the claim regarding what discovery, if any, is necessary to oppose Plaintiff's motion (*see 354 Chauncey Realty, LLC*

v *Brownstone Agency, Inc.*, 213 AD3d 544, 545 [1st Dept 2023]). Indeed, the Opposing Defendants rely solely on an attorney affirmation to oppose Plaintiff’s motion. Therefore, Plaintiff’s motion is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff State Farm Fire & Casualty Company’s motion for summary judgment against Defendants All City Family Healthcare Center, Inc., BL Pain Management PLLC, and MDCA Psychology Care based on their assignor, Defendant Lydia Aviles’ failure to appear for examinations under oath is granted in accordance with the annexed order dated March 13, 2025; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/13/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT

Present: **HON. MARY V. ROSADO**
Justice, Supreme Court

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

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

-against-

LYDIA AVILES

The "Individual Defendant"

-and-

63RD RX CORP,
ALL BORO MEDICAL P.C.,
ALL CITY FAMILY HEALTHCARE CENTER, INC.,
AVISO SUPPLY INC.,
BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C.,
a/k/a BAY RIDGE ORTHOPEDICS, P.C.,
BL PAIN MANAGEMENT PLLC,
DURAMED CARE, INC,
ECHENIQUE MEDICAL OFFICE, P.C.,
FUNCTIONAL REHABILITATION MEDICINE P.C.,
GAMMA PHYSICAL THERAPY, PLLC,
GLOBAL TECH DIAGNOSTIC INC.,
INTRA-OPERATIVE MONITORING SOLUTIONS, INC.,
LAKE SUCCESS NEUROLOGICAL SURGERY PC d/b/a
INTRA-OPERATIVE MONITORING ASSOCIATES,
MDCA PSYCHOLOGY CARE P.C.,
MEDICA MENTE SUPPLY CORP,
METRO CHEMISTS PHARMACY INC.,
OLGA GIBBONS MD,
QUALITY HEALTH CARE MGT. INC., d/b/a QUALITY
LABORATORY SERVICES
MICHAEL YURYEV
PROMPT MEDICAL SPINE CARE, PLLC,
QUEENS TOWER SUPPLY INC.,
RED MEDICAL SUPPLY, INC.,
REHAB CONCEPTS PHYSICAL THERAPY P.C.,
SEDATION VACATION PERIOPERATIVE MEDICINE
PLL, A/K/A SEDATION
VACATION PERIOP MED, PLLC,
SOUTH SHORE OSTEOPATHIC MEDICINE, P.C.,
STAND-UP MRI OF THE BRONX P.C.,
UNION SCRIPTS LLC d/b/a IIANA'S PHARMACY,
The "Medical Provider Defendants"

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Index No.: 154496/2023

ORDER & JUDGMENT

NOW, upon motion of Plaintiff, STATE FARM FIRE AND CASUALTY COMPANY seeking an Order granting the following relief:

- i. Pursuant to CPLR § 3212, granting Summary Judgment as against Answering Defendants ALL CITY FAMILY HEALTHCARE CENTER, INC, BL PAIN MANAGEMENT PLLC, and MDCA PSYCHOLOGY CARE, (collectively, the “ANSWERING DEFENDANTS”) and
- ii. For such other and further relief that this Court deems just, proper, and equitable.

and upon the Notice of Motion filed on December 10, 2024, the affirmations of Lindsay Padover, Esq., and Garrett Rigby, Esq., and the affirmation of Alyson Johnson-Shaw, in support of the motion, and the affirmation of Oleg Rybak, Esq in opposition to the motion, with the exhibits annexed thereto, all with proof of service thereof; and upon all of the pleadings and proceedings heretofore had herein, **NOW**, on motion by Goldberg, Miller & Rubin, P.C., attorneys for STATE FARM FIRE AND CASUALTY COMPANY, it is:

ORDERED, that Plaintiff’s motion for summary judgment against ANSWERING DEFENDANTS ALL CITY FAMILY HEALTHCARE CENTER, INC, BL PAIN MANAGEMENT PLLC, and MDCA PSYCHOLOGY CARE, is **GRANTED** and it is;

ORDERED, ADJUDGED, and DECLARED that STATE FARM FIRE AND CASUALTY COMPANY, is not required to pay any Mandatory Personal Injury Protection (No-Fault) benefits to ALL CITY FAMILY HEALTHCARE CENTER, INC, BL PAIN MANAGEMENT PLLC, and MDCA PSYCHOLOGY CARE, in connection with the June 24, 2022, alleged loss under STATE FARM FIRE AND CASUALTY COMPANY claim number 32-36Q4-60P; and any such lawsuits and/or arbitrations seeking to recover for this loss are hereby dismissed in accordance with this order, and it is

ORDERED that the Clerk is directed to enter judgment as against the ANSWERING DEFENDANTS, ALL CITY FAMILY HEALTHCARE CENTER, INC, BL PAIN MANAGEMENT PLLC, and MDCA PSYCHOLOGY CARE.

Dated: *March 13, 2025*

ENTER:

Mary V Rosado Jsc

J.S.C.
Hon. Mary V. Rosado