

**Longevity Med. Supply, Inc. v  
State Farm Mut. Auto. Ins. Co.**

2025 NY Slip Op 34478(U)

January 30, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-715825/20-KI

Judge: Odessa Kennedy

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This opinion is uncorrected and not selected for official publication.

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS PART 41

LONGEVITY MEDICAL SUPPLY, INC.  
a/a/o JONES, BELINDA

Index No. CV-715825/20-KI  
Motion Cal. # 47/48  
Motion Seq. # 001 & 002

Plaintiff(s),

**DECISION AND ORDER**

Recitation, as required by CPLR 2219(a) of the papers considered in review of this Motion:

-against-

**Papers**

Notice of Motion for SJ and Affidavits Annexed...	<u>1-2</u>
Cross-Motion and Affidavits Annexed .....	<u>3-4</u>
Affirmation in Opposition.....	<u>5</u>
Affirmation in Reply .....	
Other.....	

STATE FARM MUTUAL AUTOMOBILE INS. CO.  
PIP/BI CLAIMS

Defendant(s).

Upon the foregoing cited papers, after oral argument, the Decision/Order on Defendant’s motion for summary judgment and Plaintiff’s cross-motion for summary judgment, after oral argument, is decided as follows:

Defendant’s motion is DENIED.

Plaintiff’s motion is GRANTED. Plaintiff establishes its prima facie case wherein Plaintiff establishes timely and proper mailing of the bills to the Defendant.

Defendant premises its defense on res judicata and collateral estoppel based on the alleged applicability of a declaratory judgment action index 159914/2019.

Initially, Defendant failed to enter, and receive a signed Judgment from the clerk. As is cited in a recent Appellate Division, 2nd Department case- HSBC Bank USA, N.A. v Rubin 210 AD3d 73 (2022) “An order of dismissal is not the same as a judgment under CPLR 5011. An action is not actually concluded until a final judgment is entered (see State of New York Mtge. Agency v Braun, 182 AD3d 63 [2020]; Cooke-Garrett v Hoque, 109 AD3d 457 [2013]; Paola Vista Clothing v V.R.P. Calzaturificio, 148 AD2d 593, 595 [1989]).

Furthermore, the declaratory judgment must make a statement declaring the rights of the parties in order for the Decision to have preclusive effect on other Civil Court Cases. Active Chiropractic P.C. v. 21<sup>st</sup> Century 2018 Slip Opp 50200(U) (App. Term 2<sup>nd</sup> Dept), Mapfre Ins. Co. of New York v. Manoo 140 Ad 3d 168 (App. Div. 1<sup>st</sup> Dept. 2016), Metro Health Products v. Nationwide 2015 Slip Op. 25203 (App. Term 2<sup>nd</sup> Dept.).

Finally, the carrier sued in the civil action differs from the carrier/Plaintiff in the Supreme Court action, Defendant’s affidavit used in the Supreme court is insufficient to establish a connection between the two parties. See Quality Health Supply Corp. v Hertz Co. (2020 NY Slip Op 50996(U). Defendant in the Civil case did not argue that the wrong carrier was sued, did not

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move to amend, and did not otherwise argue that there is no coverage with State Farm Mutual Automobile Ins. Co.

As such, Plaintiff is to enter judgment for \$3,863.38 plus interest, attorneys fees, costs and disbursements.

This constitutes the Decision and Order of the Court.

Counsel for Plaintiff: Richard Rozhik

Counsel for Defendant:

Date: January 30, 2025



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Judge Odessa Kennedy