

**State Farm Mut. Auto. Ins. Co. v Abdul-Massih  
Family Health Nurse Practitioner, P.C.**

2025 NY Slip Op 34895(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 155174/2022

Judge: Lynn R. Kotler

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

**PRESENT: HON. LYNN R. KOTLER PART 08**

*Justice*

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STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY,

Plaintiff,

INDEX NO. 155174/2022

MOTION DATE 10/03/2025

MOTION SEQ. NO. 002

- v -

ABDUL-MASSIH FAMILY HEALTH NURSE  
PRACTITIONER, P.C., BASIS MEDICAL, P.C., BDS  
DIAGNOSTIC CORP., CHI CHINESE ACUPUNCTURE,  
P.C., EMOTE MEDICAL SERVICES, P.C., EMUNA, INC.,  
ERIC KENWORTHY, M.D., FIVE STAR RX, INC., GIBBONS  
MEDICAL, P.C., GRACE MEDICAL HEALTH PROVIDER,  
P.C., HARVEY LEVITAN, M.D., HUDSON REGIONAL  
HOSPITAL, KBJ MEDICAL PRACTICE, P.C.,  
MEADOWLANDS CARDIOLOGY, P.C., MEADOWS RX,  
INC., MICHAEL ZWIRBLIA, PSYD., NEW YORK PHYSICAL  
THERAPY TOUCH, PLLC, NORTHEAST MEDICAL  
DEVICES, LLC, NY UNION PHARMACY, INC., ONE RX  
CHEMIST, INC., PRANEVICIUS MEDICAL, P.C., PRISTINE  
RX, CORP., QUALITY ANESTHESIA SERVICES,  
ROCKAWAYS ASC DEVELOPMENT, LLC, SEDATION  
VACATION PERIOPERATIVE MEDICINE, PLLC, SHERRIE  
RAWLINS MEDICAL, P.C., SPINAL PAIN & REHAB  
MEDICAL, P.C., STAR OF N.Y. CHIROPRACTIC  
DIAGNOSTIC, P.C., VUA PHARMACY, INC., WALMED  
EQUIPMENT, LLC, WILKINS WILLIAMS MEDICAL, P.C.,  
PAMELA JORDAN, PAUL POWELL, JAQUET SIMPSON,  
SCOB, LLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for SUMMARY JUDGMENT.

**DECISION + ORDER ON  
MOTION**

**BACKGROUND**

In this action, plaintiff-insurer State Farm Mutual Automobile Insurance Company (“State Farm”) seeks a declaratory judgment that it does not have an obligation to pay no-fault benefits in connection with a motor vehicle accident that purportedly occurred on October 31, 2021. The accident allegedly involved a 2014 Kia (the “vehicle”) occupied by defendants Paul

Powell, Pamela Jordan, and Jacquet Simpson, which was insured by State Farm under Simpson's name. Powell and Jordan thereafter sought medical treatment from the medical provider defendants for injuries allegedly sustained in the subject accident and filed these medical claims with State Farm.

By decision and order dated June 21, 2023 (the "Prior Decision"), the court, as relevant here, granted State Farm's motion for default judgment (MOT SEQ 001) as against Jordan, Simpson, and defendants Chi Chinese Acupuncture, P.C., Meadows RX, Inc., New York Physical Therapy Touch, PLLC, NY Union Pharmacy, Inc., One RX Chemist, Inc., Quality Anesthesia Services, Sedation Vacation Perioperative Medicine, PLLC, Sherrie Rawlins Medical, P.C., Vua Pharmacy, Inc., and Wilkins Williams Medical, P.C. (collectively, the "Defaulting Defendants"). The court held that State Farm's evidentiary submissions established its *prima facie* entitlement to default judgment as against the Defaulting Defendants on its first and third causes of action, which assert a lack-of-coverage defense based on State Farm's founded belief that Powell's and Jordan's alleged injuries did not arise out of a covered accident. Specifically, State Farm submitted the sworn affidavit of its claim specialist, which demonstrated, *inter alia*, that: (1) Simpson, when contacted by State Farm, stated that she had never owned a Kia, never took out insurance with State Farm, owns a Dodge Charger insured by GEICO, was not involved in any collision on the date of the alleged accident, and did not know either Jordan or Powell; (2) the State Farm policy in Simpson's name was taken out just six days before the alleged accident; (3) there was no police report or MV-104 generated for the alleged accident; (4) the policy obtained under Simpson's name was fraudulently procured using a stolen identity; and (5) that Simpson was working with the NYPD in a case regarding identity theft (NYSCEF Doc. No. 77 at 3-4).

State Farm now moves (1) pursuant to CPLR 3212 for summary judgment against defendants Abdul-Massih Family Health Nurse Practitioner, P.C., Basis Medical P.C., Emote Medical Services, P.C., Emuna Inc., Five Star RX, Inc., Grace Medical Health Provider, P.C., KBJ Medical Practice, P.C., Pristine RX Corp., and Rockaways ASC Development, LLC (the "Opposing Defendants"), as well as defendants BDS Diagnostic Corp., Eric Kenworthy, M.D., Gibbons Medical P.C., Hudson Regional Hospital, Meadowlands Cardiology, P.C., Michael Zwirblia, PSYD, Northeast Medical Devices, LLC, Pranevicius Medical, P.C., Spinal Pain &

Rehab Medical, P.C., Star of N.Y. Chiropractic Diagnostic, P.C., Walmed Equipment, LLC, and Scob, LLC (the “Non-Opposing Defendants”); and (2) pursuant to CPLR 3211 to dismiss the counterclaims asserted by Basis Medical, P.C., Emuna, Inc., Five Star RX, Inc., and Pristine RX Corp (MOT SEQ 002). The motion is opposed by the Opposing Defendants. The motion is granted.

### DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of making a *prima facie* showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*see Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]).

In support of its motion, State Farm submits substantially the same evidence previously submitted in support of its motion for default judgment, which the court has already found sufficient to establish, *prima facie*, State Farm’s entitlement to judgment on its first and third causes of action asserting a lack-of-coverage defense based on the founded belief that Powell’s and Jordan’s purported injuries were not causally related to the alleged collision. As such, the motion is granted without opposition as against the Non-Opposing Defendants.

The motion is likewise granted as against the Opposing Defendants, as they fail to raise a triable issue of fact with regard to the basis of State Farm’s founded belief that Powell’s and Jordan’s injuries were not causally related to the alleged collision (*see Zuckerman*, 49 NY2d at 562). Indeed, the Opposing Defendants do not address the founded belief theory of no causal relation at all, and instead focus their opposition entirely on elements of State Farm’s three other causes of action, which are based on theories of breach of a condition precedent to coverage (specifically, Powell’s and Jordan’s failure to appear for Examinations Under Oath), fraud, and irreparable harm. As noted by the court in the Prior Decision, however, a judgment in State Farm’s favor based on its theory of no causal relation, as asserted in the first and third causes of

action, renders the three remaining causes of action moot (NYSCEF Doc. No. 77). As such, the failure to raise a triable issue of fact with regard to State Farm's *prima facie* case based on the theory of no causal relation is fatal to the opposition.

Therefore, State Farm's motion is granted to the extent it seeks summary judgment as against the Opposing Defendants and, as such, the motion is likewise granted to the extent it seeks dismissal of the counterclaims for attorneys' fees asserted by defendants Basis Medical, P.C., Emuna, Inc., Five Star RX, Inc., and Pristine RX Corp. (*see U.S. Underwriters Ins. Co. v City Club Hotel, LLC*, 3 NY3d 592, 597 [2004]).

### ***Remaining Defendants Powell and Harvey Levitan***

In the Prior Decision, the court denied the motion for default judgment as against defendant Powell based on State Farm's failure to demonstrate that Powell was served with the complaint. State Farm was given 90 days to renew its motion for default judgment as against Powell and was warned that its failure to do so would result in the dismissal of the action as against Powell pursuant to CPLR 3216 (NYSCEF Doc. No. 77 at 4). State Farm has not renewed its default judgment motion as against Powell. Therefore, the complaint is dismissed as against Powell pursuant to CPLR 3216 for failure to prosecute.

The Prior Decision also granted State Farm a 90-day extension of time to serve the summons and complaint upon defendant Harvey Levitan, M.D. (*id.*). Two-and-a-half years have elapsed since entry of the Prior Decision, but no answer has been filed by Levitan. Assuming that Levitan was properly served within the 90-day extension granted by the court, State Farm had until October 7, 2024, at the latest, to seek a default judgment against Levitan. It did not do so. Therefore, pursuant to CPLR 3215(c), the complaint is dismissed as abandoned as against Levitan.

### **CONCLUSION**

Accordingly, it is

**ORDERED** that the branch of plaintiff's motion that seeks summary judgment against defendants Abdul-Massih Family Health Nurse Practitioner, P.C., Basis Medical P.C., BDS Diagnostic Corp., Emote Medical Services, P.C., Emuna Inc., Eric Kenworthy, M.D., Five Star

RX, Inc., Gibbons Medical P.C., Grace Medical Health Provider, P.C., Hudson Regional Hospital, KBJ Medical Practice, P.C., Meadowlands Cardiology, P.C., Michael Zwirblia, PSYD, Northeast Medical Devices, LLC, Pranevicius Medical, P.C., Pristine RX Corp., Rockaways ASC Development, LLC, Spinal Pain & Rehab Medical, P.C., Star of N.Y. Chiropractic Diagnostic, P.C., Walmed Equipment, LLC, and Scob, LLC is granted; and it is further

**ORDERED** that the branch of plaintiff's motion that seeks the dismissal of the counterclaims asserted by defendants Basis Medical, P.C., Emuna, Inc., Five Star RX, Inc., and Pristine RX Corp. is granted and said counterclaims are hereby dismissed; and it is further

**ORDERED** that, pursuant to CPLR 3216, plaintiff's amended complaint is *sua sponte* dismissed as against defendant Paul Powell; and it is further

**ORDERED** that, pursuant to CPLR 3215(c), plaintiff's amended complaint is *sua sponte* dismissed as abandoned as against defendant Harvey Levitan, M.D.; and it is further

**ADJUDGED and DECLARED** that plaintiff has no duty to pay any no-fault, bodily injury/liability coverage, or uninsured motorists benefits, in the form of sums, monies, damage, awards, or benefits to defendants Abdul-Massih Family Health Nurse Practitioner, P.C., Basis Medical P.C., BDS Diagnostic Corp., Emote Medical Services, P.C., Emuna Inc., Eric Kenworthy, M.D., Five Star RX, Inc., Gibbons Medical P.C., Grace Medical Health Provider, P.C., Hudson Regional Hospital, KBJ Medical Practice, P.C., Meadowlands Cardiology, P.C., Michael Zwirblia, PSYD, Northeast Medical Devices, LLC, Pranevicius Medical, P.C., Pristine RX Corp., Rockaways ASC Development, LLC, Spinal Pain & Rehab Medical, P.C., Star of N.Y. Chiropractic Diagnostic, P.C., Walmed Equipment, LLC, and Scob, LLC, their agents, employees, assignees, or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover no-fault, bodily injury/liability coverage, or uninsured motorists benefits for the October 31, 2021 collision referenced in the complaint; and it is further

**ORDERED** that plaintiff shall serve a copy of this decision and order with notice of entry upon all defendants within 30 days from the date of entry of this decision and order; and it is further,

**ORDERED** that the Clerk shall mark the file and enter judgment accordingly.

This constitutes the Decision, Order, and Judgment of the court.

12/18/2025

DATE



LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE