

Ling Fei Ma v Mountain Val. Ind. Co.

2026 NY Slip Op 30529(U)

February 17, 2026

Supreme Court, New York County

Docket Number: Index No. 154522/2024

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 154522/2024

LING FEI MA, and YANG LING CHEN

MOTION DATE 01/22/2025

Plaintiffs,

MOTION SEQ. NO. 001

- v -

MOUNTAIN VALLEY INDEMNITY COMPANY,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

Upon the foregoing documents, Defendant’s motion for summary judgment dismissing Plaintiffs’ Complaint is granted.

I. Background

On June 9, 2023, Defendant issued an insurance policy to Plaintiffs insuring them against risks of loss from June 9, 2023 to June 9, 2024 for the building located at 3273 Perry Avenue, Brox, New York (the “Premises”). On August 2, 2023, the Premises suffered fire damage and Plaintiffs filed a claim with Defendant for damages. Defendant did not pay for the loss and issued a denial letter on April 30, 2024.

According to Defendant’s disclaimer letter, the policy was first issued in 2017 under the representation that the Premises would be Plaintiffs’ primary residence and was continuously renewed in the following years. But during the investigation of the insurance claim, Defendant learned Plaintiffs misrepresented in their application that the Premises were owner occupied. Plaintiffs admitted under oath that they leased out the Premises and had lived in Dix Hills, New York, since 2012 (*see* NYSCEF Doc. 17).

Specifically, Plaintiffs admitted that at the time of the fire the Premises were occupied by two tenants – Moses Morales who leased the first-floor apartment and Patricia Irvine who leased the second-floor apartment. As a result of the misrepresentation, Defendant advised Plaintiffs the policy was void *ab initio* and the collected premiums were returned. Then, Plaintiffs commenced this action against Defendant seeking damages under the insurance policy. Defendant now moves for summary judgment dismissing the Complaint and Plaintiffs oppose.

II. Discussion

Defendant's motion is granted. Pursuant to New York Insurance Law §§ 3105(a) and (b)(1), an insurer has the statutory right to rescind an insurance policy if the insured made a material misrepresentation on the insurance application (*Alexi Home Design, inc. v Union mutual Fire Ins. Co.*, 223 AD3d 449, 449 [1st Dept 2024]). "A misrepresentation in an insurance application is material voiding the policy ab initio, if, had the true facts been known, either the insurer would not have issued the policy or would have charged a higher premium" (*Starr Indemnity & liability Co. v Monte Carlo, LLC*, 190 AD3d 441, 441-442 [1st Dept 2021]). Even an innocent misrepresentation is sufficient to void the policy so long as the misrepresentation was material (*see 128 Hester LLC v New York Marine and General Ins. Co.*, 126 AD3d 447 447 [1st Dept 2015]). "[M]ateriality can be established by an affidavit from an underwriter and documentary evidence concerning its underwriting practices showing that the same policy would not have been issued if the correct information had been provided" (*Alexi, supra* at 450 citing *Mehta v New York life ins. Co.*, 203 AD2d 8 [1st Dept 1994]).

Here, Defendant met its *prima facie* burden of showing that Plaintiffs made a material misrepresentation at the time their policy was first issued in 2017, and which remained uncorrected up to the date the Premises suffered fire damage on August 2, 2023 (*see, e.g. East 115th St. Realty*

Corp. v Focus 7 Struga Bldg. Devs. LLC, 85 AD3d 411, 411-512 [1st Dept 2011] citing *Dwyer v First unum Life Ins. Co.*, 41 AD3d 115 [1st Dept 2007]).

Specifically, Plaintiffs admitted in their examinations under oath that at the time the original insurance policy was issued and all times thereafter, they were leasing the Premises and lived in Dix Hills, New York. Nevertheless, the insurance application states the Premises would be used as the Plaintiffs' primary residence (*see* NYSCEF Doc. 22). Defendant submitted the affidavit from its underwriting manager Patricia Fahey, who affirms under the penalties of perjury that had Defendant known that Plaintiffs were not using the Premises as a primary residence, the policy would not have been issued (*see* NYSCEF Doc. 21). The underwriting guidelines included on the motion buttress Ms. Fahey's affidavit, as those guidelines state that if a building is occupied solely by tenants, then the insured's primary residence must also be insured in order for the tenant occupied building to be eligible for coverage (NYSCEF Doc. 24). Based on these undisputed facts Defendant has met its burden on summary judgment, and the burden now shifts to Plaintiffs to raise a material and triable issue of fact.

In opposition, Plaintiffs fail to raise a material issue of fact. Plaintiffs' argument that the guidelines are ambiguous and outdated because they reference Tower Insurance, which has gone out of business, instead of National General Insurance, which purchased Tower Insurance and owns Defendant, is unavailing (*see Universal Am. Corp. v National Union Fire ins. Co. of Pittsburgh, Pa.*, 25 NY3D 675, 680 [2015] ["parties cannot create ambiguity from whole cloth where none exists, because provisions 'are not ambiguous merely because the parties interpret them differently'"]). According to Ms. Fahey's unrefuted affidavit, Tower Insurance's obligations were assumed by National General Insurance when it purchased Tower Insurance and its subsidiaries (including Defendant). Plaintiffs do nothing to refute Ms. Fahey's statements, do not

dispute that they made a misrepresentation, and fail to show that they would have been issued the same policy had they been forthcoming about their primary residence.

Plaintiffs' argument that the motion is premature because they to depose Defendant on the issue of materiality is also without merit. An affidavit from someone with personal knowledge of the facts underlying the claim is required "to demonstrate that essential facts exist but cannot yet be stated." (*354 Chauncey Realty, LLC v Brownstone Agency, Inc.* 213 AD3d 544 [1st Dept 2023]). The attorney's non-probative and speculative opposition is insufficient to establish the existence of facts not yet uncovered but in the exclusive possession of the Defendant which would be required to oppose the motion (*see also Crimlis v City of New York*, 179 AD3d 575, 575-576 [1st Dept 2020]). Plaintiffs fail to state what issues pertaining to materiality can only be uncovered through a deposition, let alone what issues of materiality are required to successfully oppose the motion. As Defendant has met its burden on summary judgment and Plaintiffs have failed to raise a triable issue of fact, Defendant's motion is granted, and the Complaint is dismissed.

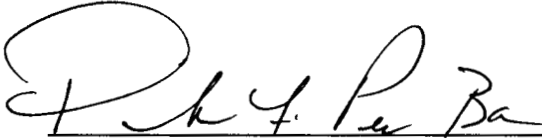
Accordingly, it is hereby,

ORDERED that Defendant's motion for summary judgment dismissing Plaintiffs' Complaint is granted, and the Complaint is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendant 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.

2/17/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

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