

<b>21st Century Sec. v All</b>
2018 NY Slip Op 30814(U)
April 27, 2018
Supreme Court, New York County
Docket Number: 151388/2014
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: JENNIFER G. SCHECTER Justice

PART 57

21ST CENTURY SECURITY

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ALL, ALEX

MOTION SEQ. NO. 004

Table with 2 columns: Description of papers and No(s). Includes rows for Notice of Motion, Answering Affidavits, and Replying Affidavits.

Upon the foregoing papers, it is ordered that this motion is DENIED.

Pursuant to CPLR 3212, plaintiff moves for summary judgment against Adelaida Physical Therapy PC, Charles Deng Acupuncture PC, Delta Diagnostic Radiology PC, Island Life Chiropractic Pain Care PLLC and Jaime G. Gutierrez, MD (collectively Defendants), seeking a declaration that the April 22, 2012 incident (Accident) was staged and not covered under the applicable insurance policy.

"An intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance" (Nationwide General Ins. Co. v Bates, 130 AD3d 795, 796 [2d Dept 2015]).

DATED: 4/27/2018

JENNIFER G. SCHECTER, J.S.C.


- 1. CHECK ONE : [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. APPLICATION : [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
3. CHECK IF APPROPRIATE : [ ] SETTLE ORDER [ ] SUBMIT ORDER
[ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

State Farm Mut. Auto. Ins. Co., 19 Misc3d 1139[A] [Civ Ct, New York County 2008]). The evidentiary proof submitted by plaintiff, while sufficient to demonstrate that it had a founded belief that any injuries sustained were in a staged accident, are insufficient to demonstrate as a matter of law that the injuries did not arise out of an insured incident so as to warrant summary judgment dismissing the complaint (*id.*; *Easy Care Acupuncture, PC v Hartford Ins. Co.* 57 Misc 3d 147[A] [App Term, 1<sup>st</sup> Dept 2017]; *Nationwide General ins. Co. v Bates*, 130 AD3d 795, 796 [2d Dept 2015] ). Significantly, the affidavit of the IA is based in large part on hearsay. Additionally, though there are inconsistencies in the testimony of those allegedly in the Accident that raise serious credibility issues, the inconsistencies do not pertain to the nature of the Accident itself so as to meet the heavy burden required to obtain summary judgment and raise issues of fact that must be addressed at trial (*Easy Care Acupuncture, PC v Hartford Ins. Co.* 57 Misc 3d 147[A] [App Term, 1<sup>st</sup> Dept 2017]).

Accordingly, it is

ORDERED that the motion is denied.

DATED: 4/27/2018

  
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JENNIFER G. SCHECTER, J.S.C.

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