

Mountain Val. Indem. v Hylton
2020 NY Slip Op 34347(U)
December 1, 2020
Supreme Court, New York County
Docket Number: 154321/2019
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA ANNE CRANE PART IAS MOTION 15EFM

Justice

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INDEX NO. 154321/2019

MOUNTAIN VALLEY INDEMNITY

MOTION DATE 11/14/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

**DECISION + ORDER ON
MOTION**

HYLTON, PETRONIA

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 30

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND) .

Upon the foregoing documents, it is

The court grants plaintiff’s motion for summary judgment. This case involves an underlying accident that occurred at the insured premises at 494 Hegeman Avenue, Brooklyn, New York (the “Premises”). Plaintiff Mountain Valley insured the Premises. The policy of insurance required the policy holder to reside at the Premises. In 2017, at the time of the accident, defendant attested that she resided at the premises where the accident occurred. However, on October 2, 2018, defendant testified at her deposition in the underlying personal injury case that she resided at 1236 East 86th Street, Brooklyn, New York. This is the same address listed on defendant’s driver’s license.

Based on this testimony, Mountain Valley disclaimed coverage on the grounds that the Premises did not qualify as an “insured location” or “residence premises.” Defendant now claims she committed perjury at her deposition about where she resided because her lawyer told her it would aid her position in the underlying case.

FILED: NEW YORK COUNTY CLERK 12/01/2020 06:56 PM

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NYSCEF DOC. NO. 31

RECEIVED NYSCEF: 12/01/2020

Although it is possible for an insured to live in multiple homes, an unsupported and conclusory assertion of residence cannot defeat an insurer's summary judgment motion premised on a "residence premises" exclusion (*Tower Ins. Co. of New York v Brown*, 130 AD3d 545, 546 [1st Dept 2015]). Courts typically enforce "residence premises" policy provision if an insured admits that he did not reside at the vacant insured premises on the date of loss (*Tower Ins. Co. of New York v Zaroom*, 145 AD3d 556, 557 [1st Dept 2016]; *Brown*, 130 AD3d at 545-46).

Here, defendant first swore to the claims adjuster that she resided at the premises. Then, at her deposition in the underlying case, testified she lived elsewhere. In opposition, defendant offers not a shred of evidence, not even an electric bill, to support her bald assertion that she resided at the Premises. Nor does she explain why her driver's license lists an address different from that of the Premises.

Finally, where a claim falls outside the policy's coverage, the insurer is not required to disclaim. Therefore, even if Mountain Valley's disclaimer were untimely, it is irrelevant (*see State Farm and Cas. Co., v Guzman*, 138 AD3d 503 [1st Dep't 2016]).

Accordingly, it is

ORDERED that the court grants plaintiff's motion for summary judgment, and it is further

ADJUDGED, DECREED AND DECLARED that plaintiff Mountain Valley does not have an obligation to defend or indemnify defendant PETRONIA HYLTON in the underlying action entitled *Jamal Lewis v Petronia Hylton*, pending in the Supreme Court of New York, Kings County, Index No. 505862/2017.


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12/1/2020

DATE

MELISSA ANNE CRANE, J.S.C.

CHECK ONE: CASE DISPOSED
GRANTED DENIED GRANTED

IN PART OTHER

APPLICATION: SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

NON- FINAL DISPOSITION

SUBMIT ORDER

REFERENCE

