

Liberty Mut. Ins. Co. v Taylor

2022 NY Slip Op 30288(U)

January 4, 2022

Supreme Court, New York County

Docket Number: Index No. 656179/2019

Judge: Laurence L. Love

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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. LAURENCE LOVE PART 63M

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 656179/2019

MOTION DATE 10/29/2021

MOTION SEQ. NO. 002

- v -

JANELLE TAYLOR, AB MODERN ACUPUNCTURE
PC, ADAGIO CHIROPRACTIC PC, ADVANCED RECOVERY
SOLUTION INC., ATLAS PHARMACY LLC, JEFFREY
COHEN, M.D. & MARK KRAMER, M.D., P.C., EMUSC LLC
DBA EMU SURGICAL CENTER, KINETIC MOVE
PHYSICAL THERAPY, PLLC, MK DME INC., PROTECHMED
INC., QI RHYTHM ACUPUNCTURE PC, RIDGEWOOD
DIAGNOSTIC LABORATORY, RIVERSIDE MEDICAL
SERVICES PC, SALUTEM PRODUCTS CORP., SEDATION
VACATION PERIOPERATIVE MEDICINE PLLC, UNICAST
INC.,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion is decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on October 22, 2019, seeking a declaration that Liberty Mutual has no duty to provide coverage or make payment to claims for No-fault benefits made by or on assignment of Janelle Taylor and thus is entitled to a Permanent Injunction and ultimately dismissal of all pending litigation and arbitration in connection with the no-fault billing submitted under a fraudulently obtained policy. In an Order dated April 21, 2020, this Court granted plaintiff's motion seeking a default judgment against the non-answering defendants, leaving only Janelle A. Taylor, Jeffrey Cohen, MD, PC, Ridgewood

Diagnostic Laboratory and Riverside Medical Services, PC as active defendants. Plaintiff now moves for summary judgment against said parties.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of its motions, plaintiff submits the affidavit of Anthony Augugliaro and Dawn Smith, SIU investigators employed by plaintiff and Darren Demmon, an underwriter employed by plaintiff, together with a transcript of Janelle Taylor's EUO and the relevant denial of claims forms (see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept 1997]; *Rafiq v. Weston*, 171 AD2d 783 [2nd Dept 1991]; *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]). Taken together, the submitted proofs establish as follows: Liberty Mutual issued automobile insurance

policy number AOS22828593040, effective September 5, 2018 through September 5, 2019, to Janelle Taylor. The policy address given to plaintiff by Ms. Taylor was 338 Heritage Hills, Somers, New York 10589. Based on this address, Liberty Mutual charged a premium of \$3,035.00. Following a loss that allegedly occurred on December 23, 2018, plaintiff opened an investigation which revealed that Ms. Taylor appears to reside and garage the insured vehicle at 450 East 148th Street, Bronx, NY. Based upon same, Liberty Mutual noticed Ms. Taylor to appear for an EUO where she confirmed that the subject vehicle is primarily garaged in the Bronx and that the only mail that she receives at the Somers address is the subject insurance documents. Upon discovery of the correct address in the Bronx, the policy was re-rated, and the premium increased to \$4,461.00. It is well settled law that a material misrepresentation made at the time an insurance policy is procured may lead to a policy being rescinded and/or avoided. See *Syncora Guarantee Inc. v. Countrywide Home Loans, Inc.*, 935 N.Y.S.2d 858 (N.Y. Sup., 2012); *Carpinone v. Mutual of Omaha Ins. Co.*, 697 N.Y.S.2d 381 (N.Y.App.Div.3.Dept., 1999). Where an insured misrepresents his/her address in order to obtain a less expensive premium, the insurer is permitted to raise such material misrepresentation as a defense to any action by him or his assignors, AA *Acupuncture Service, P.C. v Safeco Ins. Co. of America*, 25 Misc.3d 30, 887 NYS2d 739 (Supreme Court, Appellate Term, 1st Department, 2009). As such, plaintiff has established a *prima facie* entitlement to judgment.

In opposition, defendants Ridgewood Diagnostic Laboratory, PC and Riverside Medical Services PC, fail to establish an issue of fact precluding summary judgment.

ORDERED that plaintiff's motion GRANTED in its entirety; and it is further

ORDERED and DECLARED that Liberty Mutual has no obligation to provide coverage or defense under the policy to Janelle A. Taylor, Jeffrey Cohen, MD, PC, Ridgewood Diagnostic Laboratory and Riverside Medical Services, PC; and it is further

ORDERED and DECLARED that Plaintiffs' denials of all claims by Janelle A. Taylor, Jeffrey Cohen, MD, PC, Ridgewood Diagnostic Laboratory and Riverside Medical Services, PC for No-Fault benefits stemming from the alleged occurrence are deemed valid; and it is further

ORDERED that any arbitration or court hearing brought by Janelle A. Taylor, Jeffrey Cohen, MD, PC, Ridgewood Diagnostic Laboratory and Riverside Medical Services, PC for No-Fault benefits stemming from the alleged occurrence are permanently stayed; and it is further

ORDERED that all counterclaims are hereby DISMISSED.

1/4/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE