

State Farm Fire & Cas. Co. v Simmons

2023 NY Slip Op 31688(U)

May 18, 2023

Supreme Court, New York County

Docket Number: Index No. 161181/2020

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

PATRICIA SIMMONS, CORNEST SIMMONS, SHARINA SUMMERS, TYSHEEM SHACK, TROY R. FORBES, YVETTE MCCRAY, 5 BOROUGH ANESTHESIA, PLLC, ACCESS CARE PT P.C., ADVANCED COMPREHENSIVE LABORATORY LLC, AHARON GUTTERMAN, MD, PLLC, AHMED ABDELAAL, P.T., ALTAI CORP., ALTAI CORPORATION, APEX MEDICAL P.C., ARISTA PHYSICAL THERAPY P.C., ARON ROVNER MD, PLLC, ATLAS RADIOLOGY P.C., AUTORX LLC, BERNADETTE MAYERS, N.P., BOULEVARD 9229 LLC, BRIARWOOD RX INC, BV PHYSICAL THERAPY P.C., CAVALLARO MEDICAL SUPPLY INC, CITY WIDE HEALTH FACILITY, INC., COMPLETE EXPRESS MEDICAL P.C., COMPLETE NEUROPSYCHOLOGY, P.C., DR. OFFENBACHER MEDICAL IMAGING, PLLC, ELITE DRUGS INC, EMPIRE CITY LABORATORIES, INC., EZ ORTHO SUPPLY INC, GC ACUPUNCTURE, P.C., G.M. WELLNESS MEDICAL, P.C., HEALTH AND COMFORT RX INC, HEALTH EAST MEDICAL ALLIANCE LLC, IGOR MAYZENBERG, L.AC., INEW REHAB PHYSICAL THERAPY P.C., INSTA DRUGS INC, JAMES MIHALCIK, M.D., JOKE I. BAMGBOPA, N.P., KINGS HIGHWAY CHIROPRACTIC, P.C., LENOX HILL RADIOLOGY MEDICAL IMAGING, LONGEVITY MEDICAL SUPPLY, INC., MARIA ENID SOTO, P.T., MIDWOOD METROPOLITAN MEDICAL P.C., MITSOU PHILOGENE, N.P., NAYALE LAFLEUR, N.P., OPEOLUWA ELEYINAFE, M.D., PAIN MEDICINE OF NY P.C., PRO MOVE PT, P.C., QUALITY ORTHOPEDICS AND COMPLETE JOINT CARE P.C., QUEENS ARTHROSCOPY AND SPORTS MEDICINE, P.C., RAF SPORTS CHIROPRACTIC P.C., RAINE M. PESIDAS PHYSICAL THERAPY P.C., READY RX LLC, RENAN MACIAS, M.D., SCOTT H. LEIST, D.C., SHAMAYIM CHIROPRACTIC, P.C., WILLIAM COOPER, D.C., and TANGENT EHR, LLC,

Defendants.

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INDEX NO. 161181/2020
MOTION DATE 09/26/2022
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185,

186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, and 244

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, it is ORDERED that the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 164-165, 242-244) and the exhibits attached thereto, in which the court concurs, as summarized herein. In this no-fault automobile coverage declaratory judgment action, plaintiff disclaims coverage on the grounds that the injuries suffered by defendants Patricia Simmons, Cornest Simmons, Sharina Summers, and Tysheem Shack giving rise to this action were the product of a staged accident, and that the Simmons defendants failed to appear for their examinations under oath (“EUO”), breaching a condition precedent to coverage. On this motion, plaintiff has established prima facie entitlement to summary judgment on its founded belief that the accident was staged, by submission of the affidavit of its Claim Specialist (NYSCEF Doc. No. 166), the EUO transcripts of defendants Summers and Shack (YSCEF Doc. Nos. 188-189, admissible under CPLR 3116,¹ the certified police report of the accident (NYSCEF Doc. No. 186), and pictures of the subject vehicle taken after the accident (NYSCEF Doc. No. 194) (*State Farm Mut. Auto. Ins. Co. v Laguerre*, 305 AD2d 490, 491 [2d Dept 2003] [“A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident”]; *City Care Acupuncture, P.C. v Hereford Ins. Co.*, 54 Misc 3d 131[A], 2017 NY Slip Op 50037[U] [App Term, 2d Dept 2017]). In opposition, defendants do not submit any admissible evidence, and therefore fail to raise a triable issue of fact (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). Defendants’ reliance on *Nationwide Gen. Ins. Co. v Bates* (130 AD3d 795 [2d Dept 2015]) is

¹ “If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed” (CPLR 3116 [a]).

unavailing, as there the insurance company's motion relied largely on inadmissible evidence. As a staged accident is an independent ground to deny coverage, the court declines to address whether coverage was also properly declined as to treatment provided to the Simmons defendants for their failure to attend their EUOs; and it is further

ADJUDGED and DECLARED that plaintiff is not obligated to provide any coverage, reimbursements, or pay any monies, sums or funds to any of the appearing defendants herein for any and all no-fault related services for which claims and/or bills have been, or may in the future be, submitted by the Defendants to the Plaintiff, by or on behalf of PATRICIA SIMMONS, CORNEST SIMMONS, SHARINA SUMMERS and TYSHEEM SHACK, arising out of the automobile collision of November 25, 2019; and it is further

ADJUDGED and DECLARED that the alleged motor vehicle accident of November 25, 2019, which gave rise to the above-captioned lawsuit, was not the product of a covered event as defined by the applicable policy of insurance issued by STATE FARM FIRE since the incident of November 25, 2019, was the product of a staged and/or intentional event; and it is further

ADJUDGED and DECLARED that plaintiff, by reason of no coverage and since the alleged accident of November 25, 2019 was the product of a staged and/or intentional event, is not required to pay any sums, monies, damages, awards and/or benefits to any of the appearing Defendants named herein, their agents, employees, assignors and/or heirs arising out of any current or future proceedings, all uninsured/underinsured motorists lawsuits and arbitrations, arbitrations and lawsuits seeking to recover no-fault benefits, third-party lawsuits and arbitrations, and all claims for property damage arising out of the alleged accident of November 25, 2019.

This constitutes the decision and order of the court.



<u>5/18/2023</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE