Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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SEVASTIAN ROULES,

Plaintiff(s),

- against -

STATE FARM INSURANCE COMPANIES and
JOSE A. RODRIGUEZ,

Defendant(s).

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Index No.:18262/06

Motion Date:05/06/08

Motion Cal. No.:29
Motion Seq. No: 3

The following papers numbered 1 to 10 read on this motion by the defendant State Farm Insurance Companies for an order granting summary judgment.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service........	1 - 4
Affirmation in Opposition-Exhibits-Service...........	5 - 7
Reply Affirmation-Exhibits-Service...................	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This action seeks a declaration of rights and obligations of the defendants pertaining to injuries allegedly sustained by the plaintiff when the parties were involved in a motor vehicle accident on June 30, 2001 at or near the intersection of Belt Parkway and North Conduit Avenue in the County of Queens, City and State of New York. On February 9, 2006, in a related action, the Honorable Valerie Braithwaite Nelson granted plaintiff a default judgment against defendant Jose A. Rodriguez ("Rodriguez") in the amount of $150,000. This action was commenced , on August 18, 2006, to collect on this judgment. Plaintiff asserts that the defendant State Farm Insurance Companies ("State Farm") wrongfully denied coverage on behalf of defendant Rodriguez.

State Farm now moves, pursuant to CPLR §3212, for an order

granting summary judgment and dismissing the plaintiff's complaint against it. CPLR §3212(b) requires that for a court to grant summary judgment the court must determine if the movant's papers justify holding as a matter of law, "that the cause of action or defense has no merit." The evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant (*see, Grivas v. Grivas*, 113 A.D.2d 264, 269 [2d Dept. 1985]; *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]; *Parvi v. Kingston*, 41 N.Y.2d 553, 557 [1977]. The court's function, when presented with a summary judgment motion, is not to determine credibility or engage in issue determination, but rather to determine whether there are material issues of fact for the court to determine. *(See, Quinn v. Krumland*, 179 A.D.2d 448 [1st Dept. 1992]).

In the instant action, State Farm asserts that it first received notice of the underlying accident on December 14, 2004, and that it served a disclaimer notice to defendant Rodriguez on December 27, 2004. In support of this motion, State Farm annexes various cases which stand for the proposition that where an insurer timely notifies its insured of the grounds for the disclaimer, pursuant to Insurance Law §3420, the insurance company's actions are deemed reasonable. However, whether the service of the disclaimer in this action was timely, remains an issue of fact. Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law. (*See, Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]; *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]). As there remain material issues of fact in this matter as to the timeliness of the disclaimer, State Farm's motion for summary judgment is denied.

Dated: August 4, 2008

JANICE A. TAYLOR, J.S.C.

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