

200 A.D.3d 424  
Supreme Court, Appellate Division,  
First Department, New York.

MOUNTAIN VALLEY INDEMNITY  
COMPANY, Plaintiff-Respondent,

v.

Petronia HYLTON, Defendant-Appellant,  
Jamel Lewis, Defendant.

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Index No. 154321/19

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Case No. 2021-02122

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ENTERED December 2, 2021

#### Attorneys and Law Firms

Bruce S. Reznick, P.C., Brooklyn ([Thomas A. Torto](#) of counsel), for appellant.

Mound Cotton Wollan & Greengrass LLP, New York ([Tania A. Gondiosa](#) of counsel), for respondent.

[Gische, J.P.](#), [Kapnick, Kern, Gesmer, Kennedy, JJ.](#)

#### Opinion

Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about December 1, 2020, which granted plaintiff's motion for summary judgment declaring that it has no obligation to defend or indemnify defendant Petronia

Hylton in the underlying personal injury action, and so declared, unanimously affirmed, without costs.

Plaintiff established that it properly disclaimed coverage for the underlying action by submitting evidence that, on the date of the loss, defendant did not live at the premises that were to be covered under the policy. Although she gave a sworn statement to the claims adjuster that she did live at the premises, defendant testified under oath at the deposition in the underlying action that she lived elsewhere at the time of the accident, and her deposition testimony was corroborated by her driver's license. As a result, the premises did not qualify as a covered "residence premises" or "insured location" as defined by the policy (*see MIC Gen. Ins. Corp. v. Campbell*, 181 A.D.3d 428, 428–429, 117 N.Y.S.3d 562 [1st Dept. 2020]; *see also Tower Ins. Co. of N.Y. v. Zaroom*, 145 A.D.3d 556, 557, 44 N.Y.S.3d 32 [1st Dept. 2016]). Defendant later asserted in an affidavit that she had committed perjury at the deposition because her attorney told her that lying would help her defense. However, she offered no evidence to support her assertion of residence, and, particularly in light of the address on her driver's license, her affidavit is insufficient to defeat plaintiff's motion (*see Tower Ins. Co. of N.Y. v. Brown*, 130 A.D.3d 545, 546, 14 N.Y.S.3d 37 [1st Dept. 2015]).

\*764 We have considered defendant's other contentions, to the extent preserved, and find them unavailing.

#### All Citations

200 A.D.3d 424, 154 N.Y.S.3d 763 (Mem), 2021 N.Y. Slip Op. 06768