

**APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE 2ND, 11TH & 13TH JUDICIAL DISTRICTS**

Submitted - March 24, 2021 Term

THOMAS P. ALIOTTA, P.J.
WAVNY TOUSSAINT
DONNA-MARIE E. GOLIA, JJ.

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DECISION & ORDER

Adelaida Physical Therapy, P.C., as Assignee of
Damis, Magalie, Respondent, v Lancer Insurance Co.,
Appellant.

Appellate Term Docket No.
2018-2507 K C

Lower Court # 5723/14

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Hollander Legal Group, P.C.(Allan Hollander of counsel), for appellant.

The Rybak Firm, PLLC (Damin J. Toell of counsel), for respondent.

Appeal from a judgment of the Civil Court of the City of New York, Kings County (Louis L. Nock, J.), entered May 4, 2018. The judgment, entered pursuant to a decision of that court dated November 16, 2017, after a nonjury trial, awarded plaintiff the principal sum of \$4,181.20.

ORDERED that, on the court's own motion, the notice of appeal from the decision dated November 16, 2017 is deemed a premature notice of appeal from the judgment entered May 4, 2018 (*see* CPLR 5520 [c]); and it is further,

ORDERED that the judgment is reversed, with \$30 costs, and the matter is remitted to the Civil Court for the entry of a judgment in favor of defendant dismissing the complaint.

In this action by a provider to recover assigned first-party no-fault benefits, defendant appeals from a judgment, after a nonjury trial, awarding plaintiff the principal sum of \$4,181.20.

For the reasons stated in *JCC Med. P.C., as Assignee of Damis, Magalie v Lancer Ins. Co.* (___ Misc 3d ___, 2021 NY Slip Op _____ [appeal No. 2018-2503 K C], decided herewith), the judgment is reversed and the matter is remitted to the Civil Court for the entry of a judgment in favor of defendant dismissing the complaint.

ALIOTTA, P.J., TOUSSAINT and GOLIA, JJ., concur.

ENTER:


Paul Kenny
Chief Clerk

May 21, 2021

ADELAIDA PHYSICAL THERAPY, P.C. v LANCER INS. CO.