

Country-Wide Ins. Co. v Garvey
2017 NY Slip Op 31614(U)
August 1, 2017
Supreme Court, New York County
Docket Number: 160907/2014
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, J.S.C.
Justice

PART 2

-----X

COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 160907/2014

MOTION DATE _____

- v -

MOTION SEQ. NO. 003

AMANDA GARVEY,

Defendant.

**DECISION ORDER AND
JUDGMENT**

-----X

The following e-filed documents, listed by NYSCEF document number 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this application to/for Default Judgment

Upon the foregoing documents, it is ordered that the motion is granted.

In this declaratory judgment action, plaintiff Country-Wide Insurance Company moves, pursuant to CPLR 3215, for a default judgment against defendant Amanda Garvey. After a review of plaintiff's motion, which is unopposed, and after a review of the relevant statutes and case law, the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

This action arises from an alleged automobile accident on April 10, 2014 in which defendant Amanda Garvey was allegedly injured. On or about November 3, 2014, plaintiff

commenced the captioned action against defendant Garvey and several medical providers which allegedly treated her for injuries arising from the incident. NYSCEF Doc. 1.¹ The claims against all of the medical providers except DHD Medical were dismissed by order of this court dated December 5, 2016. Doc. 37. The claim against DHD Medical was discontinued. In its verified complaint, plaintiff alleged that it was entitled to a declaration that defendants were not entitled to no-fault benefits pursuant to a policy of insurance it issued (policy number CS451580213), which covered a vehicle involved in the accident, because Garvey breached the policy by failing to appear for an examination under oath (“EUO”).

By order dated December 1, 2016, this Court granted plaintiff a 60-day extension of time in which to serve Garvey. Doc. 36. Plaintiff served Garvey with the summons and complaint by substituted service pursuant to CPLR 308 (2) on January 6, 2017. Doc. 42.

On May 25, 2017, plaintiff filed the instant motion, pursuant to CPLR 3215, for a default judgment against defendant Garvey based on her failure to answer or otherwise respond to the complaint. Docs. 44-45.

LEGAL CONCLUSIONS:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof

¹ All references are to documents filed with NYSCEF in connection with this matter.

of the defaulting party's default in answering or appearing." *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Here, plaintiff's counsel has submitted the affidavit of a process server establishing service of the summons and complaint, proof of the facts constituting the claim in the form of the complaint verified by an officer of the plaintiff, and proof of defendant's failure to answer or otherwise respond. Thus, plaintiff has established each of the elements needed to establish its entitlement to a default judgment against Garvey. *See Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649 at 651.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by plaintiff Country-Wide Insurance company for a default judgment against defendant Amanda Garvey is granted; and it is further

ORDERED and ADJUDGED that defendant Amanda Garvey is not an insured under policy number CS451580213 issued by plaintiff Country-Wide Insurance Company; and it is further

ORDERED that plaintiff is to serve a copy of this order with notice of entry on defendant, the County Clerk's Office (Room 141B) and the Clerk of the Trial Support Office (Room 158) within 30 days hereof; and it is further

ORDERED that the action is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of this Court.

8/1/2017

DATE

HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE