

Global Liberty Ins. Co. of N.Y. v St. Fleur

2016 NY Slip Op 32060(U)

September 27, 2016

Supreme Court, Bronx County

Docket Number: 301831/15

Judge: Wilma Guzman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Index No. 301831/15
Motion Calendar No. 9
Motion Date: 7/25/16

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GLOBAL LIBERTY INSURANCE COMPANY OF
NEW YORK,

Plaintiff,

-against-

DECISION/ ORDER

Present:

Hon. Wilma Guzman
Justice Supreme Court

HENRY ST. FLEUR, BEST CARE PHYSICAL
THERAPY, P.C., CENTRAL NEUROLOGY, P.C.,
CHIROPRACTIC EXAM WORKS, P.C.,
DR. ROSSI, MD, P.C., GOLDSTAR EQUIPMENT, INC.,
KETAN D. VORA, DO, P.C., MATTHEW CARNIOL DC,
NORWOOD MEDICAL, P.C., PROMISE HEALING
ACUPUNCTURE, PLLC., TITAN PHARMACY, and
ULTIMATE HEALING ACUPUNCTURE, P.C.,

Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion to dismiss the
plaintiff's complaint:

| <u>Papers</u> | <u>Numbered</u> |
|--|-----------------|
| Notice of Motion, Affirmation in Support, | |
| Exhibits Thereto | 1 |
| Affirmation in Opposition..... | 2 |
| Reply Affirmation..... | 3 |

Motion decided as follows: Upon deliberation of the application duly made by plaintiff herein, by **NOTICE OF MOTION**, and all the papers in connection therewith, for an Order: (1) pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against HENRY ST. FLEUR, BEST CARE PHYSICAL THERAPY, P.C., CENTRAL NEUROLOGY, P.C., CHIROPRACTIC EXAM WORKS, P.C., DR. ROSSI, MD, P.C., KETAN D. VORA, DO, P.C., MATTHEW CARNIOL DC, NORWOOD MEDICAL, P.C., PROMISE HEALING ACUPUNCTURE, PLLC, TITAN PHARMACY, and ULTIMATE HEALING ACUPUNCTURE, P.C., and ordering adjudging and decreeing that these defendants are not entitled to no-fault coverage; and (2) pursuant to CPLR §3212(b), granting summary judgement against defendant GOLDSTAR EQUIPMENT, INC. (hereinafter "GOLDSTAR"), adjudging and decreeing that GOLDSTAR is not entitled to no-fault coverage, is heretofore granted in part and denied in part.

It should be noted at the outset that defendants HENRY ST. FLEUR, BEST CARE PHYSICAL THERAPY, P.C., CENTRAL NEUROLOGY, P.C., CHIROPRACTIC EXAM WORKS, P.C., DR. ROSSI, MD, P.C., KETAN D. VORA, DO, P.C., MATTHEW CARNIOL DC, NORWOOD MEDICAL, P.C., PROMISE HEALING ACUPUNCTURE, PLLC, TITAN PHARMACY, and

ULTIMATE HEALING ACUPUNCTURE, P.C., did not oppose this application by plaintiff and did not appear for oral arguments on July 25, 2016. This motion was therefore submitted on default of the aforesaid defendants. As such, plaintiff's application, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against HENRY ST. FLEUR, BEST CARE PHYSICAL THERAPY, P.C., CENTRAL NEUROLOGY, P.C., CHIROPRACTIC EXAM WORKS, P.C., DR. ROSSI, MD, P.C., KETAN D. VORA, DO, P.C., MATTHEW CARNIOL DC, NORWOOD MEDICAL, P.C., PROMISE HEALING ACUPUNCTURE, PLLC, TITAN PHARMACY, and ULTIMATE HEALING ACUPUNCTURE, P.C., and ordering adjudging and decreeing that these defendants are not entitled to no-fault coverage; is heretofore granted in its entirety.

This action involves injuries sustained by defendant HENRY ST. FLEUR (hereinafter "ST. FLEUR"), as a result of an October 12, 2012 motor vehicle accident. Plaintiff provided a policy of insurance to ST. FLEUR, under a New York policy of insurance numbered FHPO717555-1. The policy of insurance included a no-fault endorsement which provided coverage to an insured or eligible injured person in the amount of at least \$50,000 for all necessary expenses resulting from a motor vehicle accident. The policy was in effect on October 12, 2012. As a result of the underlying motor vehicle accident, ST. FLEUR sought no-fault benefits from the following defendants: BEST CARE PHYSICAL THERAPY, P.C., CENTRAL NEUROLOGY, P.C., CHIROPRACTIC EXAM WORKS, P.C., DR. ROSSI, MD, P.C., GOLDSTAR EQUIPMENT, INC., KETAN D. VORA, DO, P.C., MATTHEW CARNIOL DC, NORWOOD MEDICAL, P.C., PROMISE HEALING ACUPUNCTURE, PLLC., TITAN PHARMACY, and ULTIMATE HEALING ACUPUNCTURE, P.C. (hereinafter collectively referred to as the "Provider Defendants"). ST. FLEUR assigned his rights to collect no-fault benefits to the Provider Defendants. The Provider Defendants thereafter allegedly submitted no-fault billing to plaintiff for services rendered to ST. FLEUR. Plaintiff allegedly did not receive any no fault billing before November 8, 2012.

On November 26, 2012, OmniMed Evaluation Services, on behalf of plaintiff, sent to ST. FLEUR and his attorney a letter requesting that ST. FLEUR attend an independent medical examination (hereinafter "IME") on December 7, 2012. ST. FLEUR did not appear for that IME. On December 10, 2012, OmniMed Evaluation Services sent to ST. FLEUR and his attorney a letter requesting that ST. FLEUR attend an IME on December 20, 2012. ST. FLEUR did not appear for that IME. On December 26, 2012, OmniMed Evaluation Services sent to ST. FLEUR and his attorney a letter requesting that ST. FLEUR attend an IME on January 4, 2013. ST. FLEUR did not appear for that IME. Again on January 9, 2013, OmniMed Evaluation Services sent to ST. FLEUR and his attorney a letter requesting that ST. FLEUR attend an IME on January 15, 2013. Once again ST. FLEUR did not appear for that IME. On January 18, 2013 plaintiff denied the claim based upon the claimant's failure to attend the IMEs.

Plaintiff has failed to make a *prima facie* showing of entitlement to summary judgement with respect to GOLDSTAR. Although on its face, it appears that the notices for IME were actually sent to ST. FLEUR, it does not automatically follow that the notices were timely. See American Tr. Ins. Co. V. Longevity Med. Supply Inc., 2015 NY Slip Op 06761 (1st Dept. 2015). Plaintiff does not attach any of the defendant's bills as exhibits to their application. Moreover, a blanket statement by plaintiff's claims adjuster that plaintiff "received all billing after November 8, 2012" is not *prima facie*

evidence sufficient to establish that the notices were timely sent. As such, plaintiff's application is heretofore denied, with leave to renew, upon the annexing proper evidence that it timely scheduled the IMEs at issue.

Accordingly, it is:

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against HENRY ST. FLEUR, and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against BEST CARE PHYSICAL THERAPY, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against CENTRAL NEUROLOGY, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against CHIROPRACTIC EXAM WORKS, and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against DR. ROSSI, MD, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against KETAN D. VORA, DO, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against MATTHEW CARNIOL DC, and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against NORWOOD MEDICAL, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against PROMISE HEALING ACUPUNCTURE, PLLC, and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against TITAN PHARMACY, and ordering adjudging and decreeing that the

defendant is not entitled to no-fault coverage, is heretofore granted. It is further

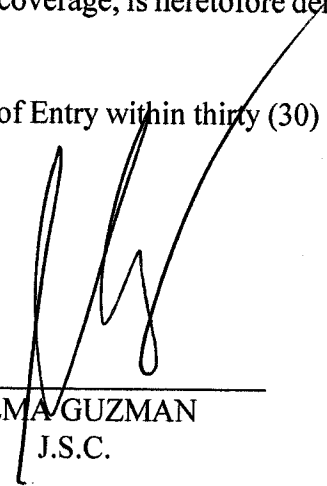
ORDERED that the Motion by plaintiff, pursuant to CPLR §3215, granting plaintiff leave to enter a default judgement against ULTIMATE HEALING ACUPUNCTURE, P.C., and ordering adjudging and decreeing that the defendant is not entitled to no-fault coverage, is heretofore granted. It is further

ORDERED that plaintiff's application for granting summary judgement against GOLDSTAR, and adjudging and decreeing that GOLDSTAR is not entitled to no-fault coverage, is heretofore denied, without prejudice.

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The forgoing constitutes the Decision and Order of the Court.

Dated: SEP 27 2016



Hon. WILMA GUZMAN
J.S.C.