

Encompass Home & Auto Ins. Co. v Makendy

2017 NY Slip Op 32039(U)

September 28, 2017

Supreme Court, New York County

Docket Number: 160580/2015

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

ENCOMPASS HOME & AUTO INSURANCE
COMPANY,

Plaintiff,

-against-

ELIZINDA MAKENDY, MAXIME MAKENDY,
MARCLISH DAVIDSON, ALICE ALARCON,
JEFFERSON JUSTE, BEMBA KEITA, JEAN
ADOLPHE, JOSEPH BLANC, VANESSA BLANC,
SHANA DABADY, JEAN BAPTISTE EDRISZCARD,
JOSEPH CARLINE, STEPHANIE LAURENT, MARIE
LOUIS, ACCELERATED SURGICAL CENTER,
ATLANTIC CHIROPRACTIC P.C., AXIAL
CHIROPRACTIC P.C., BARNET SURGICAL
CENTER, COASTAL ANESTHESIA SERVICES,
CPM MED SUPPLY INC., EFFECTIVE
HEALTHCARE MEDICAL P.C., HUMAN TOUCH
REHAB PT PLLC, ISURPLY LLC, LLJ
THERAPEUTIC SERVICES PT P.C., MAXIM
TYORKIN, MD, MEDICSURG, MIDDLE VILLAGE
DIAGNOSTIC IMAGING P.C., NATASHA KELLY
MD, NEW BEGINNING CHIROPRACTIC P.C.,
PRECISION MEDICAL PRODUCTS INC., PROMPT
MEDICAL SUPPLY INC., SPECIALTY SURGERY
OF SEACAUCUS, STAR OF N.Y. CHIROPRACTIC
DIAGNOSTIC P.C., STATE CHIROPRACTIC P.C.,
TONG LI, MD, P.C., VISION REHAB PT P.C.,
VLADIMIR SHUR, XU GAO ACUPUNCTURE P.C.,
XVV, INC, YEVGENIY MARGULIS, PHD,
AMERICAN ALTERNATIVE INSURANCE CORP.,

Defendants,

-against-

ADDITION ACUPUNCTURE P.C., ADVANCED
RECOVERY EQUIPMENT AND SUPPLIES, LLC,
AHMED MEDICAL CARE P.C., ANGELIC
PHYSICAL THERAPY P.C., AOM MEDICAL
SUPPLY, A.R.A MEDICAL CARE, P.C., APOLLO
IMAGING MANAGEMENT LLC, ATLANTIC

Index No: 160580/2015

DECISION AND ORDER

Motion Sequences: 006, 007

CHIROPRACTIC, PC, AXIAL CHIROPRACTIC
P.C., BROOKLYN CARDIOVASCULAR CARE,
P.L.L.C., CLEAR WATER PSYCHOLOGICAL
SERVICES P.C., DUNAMIS REHAB PT P.C., EAST
SIDE PRIMARY MEDICAL CARE, P.C.,
EFFECTIVE HEALTHCARE MEDICAL P.C.,
EXCEL SURGERY CENTER, L.L.C., HAN XU
ACUPUNCTURE, P.C., HORIZON PT CARE P.C.,
HUMAN TOUCH REHAB, PT, PLLC,
KENSINGTON RADIOLOGY GROUP, P.C.,
LENEX SERVICES INC., LLJ, THERAPEUTIC
SERVICES, P.T. P.C., NEW BEGINNING
CHIROPRACTIC P.C., NOEL BLACKMAN
PHYSICIAN PC, ORTHOPRO SERVICES, INC.,
PARK AVENUE ORTHOPAEDICS, PC,
PRECISION IMAGING OF NEW YORK, P.C.,
PROFESSIONAL CHIROPRACTIC CARE P.C.,
PROMPT MEDICAL SUPPLY, INC., REGENCY
HEALTHCARE MEDICAL, PLLC, SOVERA
MEDICAL SUPPLY, CORP, SP ORTHOTIC
SURGICAL & MEDICAL SUPPLY, INC.,
THERAPEUTIC CHIROPRACTIC SERVICES P.C.,
STATE CHIROPRACTIC, PC, TISBURY
PSYCHOLOGICAL SERVICES P.C., TONG LI, MD,
PC, US TECH REHAB INC., VISION REHAB PT,
P.C., WEALTH OF HEALTH MEDICAL P.C.,
WINTHROP FIRST CARE MEDICAL SERVICES,
P.C., XU GAO ACUPUNCTURE PC,
ACCELERATED SURGICAL CENTER OF NORTH
JERSEY, ANGELICA SARENAS, BARNETT
SURGICAL CENTER, BARRY HUGHES, OR
ASSIST, PA, DANA WOLFSON, LMT, DR. LEE
LOEWINGER, ELECTRO PHYSIOLOGIC
MEDICAL DIAGNOSTICS, PC, EXCEL SURGERY
CENTER, LLC, FRANCES SARIYA, GOTHAM
MEDICAL SERVICES, HAAR ORTHOPEDICS &
SPORTS MEDICINE, HEALTH EAST
AMBULATORY SURGICAL CENTER, ILYCE
MARANGA, JEFFREY BECK, JOHN IOZZIO,
JUAN XU D.B.A. ADDITION ACUPUNCTURE, PC,
KSENIA PAVLOVA, D.O., MAXIMUM
ORTHOPAEDICS AND SPORTS MEDICINE,
MEDRITE URGENT CARE, MIDMARK
DIAGNOSTICS GROUP, NATASHA KELLY, MD,
NEW YORK ORTHOPAEDIC SURGERY &

REHABILITATION, NORTHEAST ANESTHESIA AND PAIN MANAGEMENT, PDCN EMERGENCY AMBULANCE, SOUTH DEAN ORTHOPAEDICS, SPECIALTY SURGERY OF SECAUCUS, LLC, SPORTS MEDICINE & ORTHOPAEDIC REHAB, PC, SPINE & ORTHOPAEDIC REHABILITATION CENTER, TITAN PHARMACY, USAA HEALTH PRODUCTS, INC., WINTHROP UNIVERSITY HOSPITAL,

Cross-Claim Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/ Affirmations/ Memos of Law annexed	<u>1, 2</u>

ERIKA M. EDWARDS, J.:

There are two motions pending before the court. Under motion sequence 006, Defendant American Alternative Insurance Company ("American") moves to renew part of its motion for default judgment, under motion sequence 004, against Defendants Elizinda Makendy, Maxime Makendy, Marclish Davidson, Alice Alarcon, Jefferson Juste, Jean Adolphe, Joseph Blanc, Vanessa Blanc, Jean Baptiste -Edriszcard, Joseph Carline, Stephanie Laurent, Marie Louis, Maxim Tyorkin, MD, Natasha Kelly, MD, Vladimir Shur, Yevgeniy Margulis Ph.D and as against Cross-Claim Defendants Angelica Sarenas, Frances Sariya, and Ilyce Maranga (collectively "Defaulting Defendants"). Under motion sequence 007, Plaintiff Encompass Home & Auto Insurance Company ("Encompass") moves to renew part of its motion for default judgment, under motion sequence 003, against Defendants Elizinda Makendy, Maxime Makendy, Marclish Davidson, Alice Alarcon, Jefferson Juste, Jean Adolphe, Joseph Blanc, Vanessa Blanc, Jean Baptiste -Edriszcard, Joseph Carline, Stephanie Laurent, Marie Louis, Maxim Tyorkin, MD, Natasha Kelly, MD, Vladimir Shur and Yevgeniy Margulis Ph.D

(collectively "Defaulting Defendants"). These motions are hereby consolidated for disposition as set forth herein. The court grants American's and Encompass' motions without opposition.

On October 15, 2015, Plaintiff Encompass commenced an action seeking declaratory judgment declaring that the accident occurring on August 25, 2014, was the product of a staged and/or intentional collision for which coverage is not afforded and requested other relief. American subsequently filed a Summons and Amended Answer with cross-claims on January 27, 2016, which asserted cross-claims against the Defaulting Defendants. American's cross-claims allege that the subject loss was not accidental and was not covered under American's insurance policy. On June 9, 2017, this court partially granted American's and Encompass' motion for default judgment against all defaulting parties. However, the court denied both motions as to the above-mentioned Defaulting Defendants since American and Encompass failed to provide the court with non-military affidavits for the individual Defaulting Defendants but granted American and Encompass leave to renew their motions upon proof that the Defaulting Defendants are not currently members of the military. As directed by the court, American and Encompass now move to renew their motions and have submitted non-military affidavits based on investigations of the Defaulting Defendants' military status no more than 30 days prior to the instant application.

American and Encompass demonstrated their entitlement to default judgment against Defaulting Defendants pursuant to CPLR 3215. American and Encompass demonstrated that Defaulting Defendants were properly served with their summonses and complaints, that Defaulting Defendants failed to answer or appear in this action, that the time to do so has long since passed, and that their claims against Defaulting Defendants are meritorious. Furthermore,

on June 6, 2017, this court declared that the subject accident which occurred on August 25, 2014; was a staged collision intended to look like an accident.

Accordingly, it is hereby

ORDERED that Defendant American Alternative Insurance Company's and Plaintiff Encompass Home & Auto Insurance Company's motions to renew under motion sequences 006 and 007 are granted; and it is further

ORDERED that Defendant American Alternative Insurance Company's motion for default judgment (motion sequence 006) is granted to the extent that the Clerk is directed to enter default judgment in favor of Defendant American Alternative Insurance Company as against Defendants Elizinda Makendy, Maxime Makendy, Marclish Davidson, Alice Alarcon, Jefferson Juste, Jean Adolphe, Joseph Blanc, Vanessa Blanc, Jean Baptiste -Edriszcard, Joseph Carline, Stephanie Laurent, Marie Louis, Maxim Tyorkin, MD, Natasha Kelly MD, Vladimir Shur, Yevgeniy Margulis Ph.D., and Cross-Claim Defendants Angelica Sarenas, Frances Sariya, and Ilyce Maranga; and it is further

ORDERED that Plaintiff Encompass Home & Auto Insurance Company's motion for default judgment (motion sequence 007) is granted to the extent that the Clerk is directed to enter default judgment in favor of Plaintiff Encompass Home & Auto Insurance Company as against Defendants Elizinda Makendy, Maxime Makendy, Marclish Davidson, Alice Alarcon, Jefferson Juste, Jean Adolphe, Joseph Blanc, Vanessa Blanc, Jean Baptiste -Edriszcard, Joseph Carline, Stephanie Laurent, Marie Louis, Maxim Tyorkin, MD, Natasha Kelly MD, Vladimir Shur, and Yevgeniy Margulis Ph.D.; and it is further

ADJUDGED AND DECLARED that the underlying loss of August 25, 2014, was a staged collision intended to look like an accident, and is therefore an uncovered loss; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. has no duty to afford third-party bodily injury defense or indemnity to the defaulting parties for the underlying loss; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. has no duty to afford coverage for any claims for bodily injuries made by or on behalf of any person or entity in connection with the underlying incident; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. has no duty to afford uninsured and/or underinsured motorist coverage to or on behalf of the defaulting parties for the underlying loss; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. has no duty to afford property damage coverage to or on behalf of the defaulting parties for the underlying loss; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. has no duty to American has no duty to afford no-fault benefits to or on behalf of the defaulting parties for the underlying loss;

ADJUDGED AND DECLARED that should Encompass Home & Auto Insurance Company obtain a verdict or judgment that Encompass Home & Auto Insurance Company may recover against American Alternative Insurance Corp., American Alternative Insurance Corp. is entitled to full contribution, apportionment, and indemnification from and against the defaulting parties; and it is further

ADJUDGED AND DECLARED that American Alternative Insurance Corp. is entitled to damages in an amount to be determined upon further motion, at trial or inquest, in the amount of the insurance benefits conferred to defaulting parties by American Alternative Insurance Corp., plus pre-and post-judgment costs, interest, and attorney's fees; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that all remaining parties must appear for a preliminary conference on November 16, 2017 at 9:30 a.m., in Part 47, Room #320, 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.

Date: September 28, 2017



HON. ERIKA M. EDWARDS, J.S.C.