

Liberty Mut. Ins. Co. v Hayes
2018 NY Slip Op 31283(U)
June 15, 2018
Supreme Court, New York County
Docket Number: 652649/12
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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LIBERTY MUTUAL INSURANCE COMPANY and
LIBERTY MUTUAL FIRE INSURANCE COMPANY

Plaintiff

Index No. 652649/12

v

DECISION AND ORDER

RONALD HAYES, LONNIE JEFFERSON, TY-ASIA
MARACUS, A & F MEDICAL PC, ABLE ORTHOPEDIC
& SPORTS MEDICINE PC, APPLE MEDICAL
SUPPLIES, INC., BAY NEEDLE CARE
ACUPUNCTURE PC, BENOIT CHIROPRACTIC PC,
BRONX CHIROPRACTIC SERVICE PC, CRIMSON
CHIROPRACTIC P.C., FIVE BORO PSYCHOLOGICAL
AND LICENSED MASTER SOCIAL WORK SERVICES
PLLC, HILLSIDE SURGICARE, INDEPENDENT PT
CARE PC, LINDEN EQUIPMENT INC, MED
EQUIPMENTS SERVICE INC., MOBILITY EXPERTS
MEDICAL PC, NEW CENTURY MEDICAL
DIAGNOSTIC PC, NEW MILLENNIUM MEDICAL
IMAGING PC, PAIN MANAGEMENT CENTER OF NJ,
PARKVIEW ADVANCED MEDICAL PC, PHYSICAL
THERAPY CONNECTION PC, PITKIN MEDICAL
DIAGNOSTICS PC, PUGSLEY CHIROPRACTIC PC,
RB CHIROPRACTIC CARE PC, REHAB CHOICE
CORP or REHAB CHOICE PT RC, ROM MEDICAL
PC, SHAKER HILLS MEDICAL DIAGNOSTIC PC,
SILVER LOTUS ACUPUNCTURE PC, SM
CHIROPRACTIC PC, STAND UP MRI OF BROOKLYN
PC, STAR MEDICAL AND DIAGNOSTIC PLLC,
SUTTER MEDICAL CARE PC, SYVIA LOBO M.D.,
TONG LI M.D., TRIBORO MED SUPPLY INC.,
UTOPIA EQUIPMENT INC., UPPER CHESAPEAKE
MEDICAL CENTER, VICTORY MEDICAL
DIAGNOSTICS PC, and VIP MEDICAL SUPPLIES
INC.

Defendants.

MOT SEQ 001

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this declaratory judgment action, the plaintiffs move for (1) leave to enter a default judgment pursuant to CPLR 3215 as against defendants Ronald Hayes, Lonnie Jefferson and Ty-Asia Maracus (the individual defendants), and A & F Medical PC, Able Orthopedic & Sports Medicine PC, Apple Medical Supplies, Inc., Bronx Chiropractic Service PC, Crimson Chiropractic P.C., Hillside Surgicare, Independent PT Care PC, Mobility Experts Medical PC, New Century Medical Diagnostic PC, New Millenium Medical Imaging PC, Pain Management Center of NJ, Parkview Advanced Medical PC, Physical Therapy Connection PC, Pitkin Medical Diagnostics PC, Pugsley Chiropractic PC, RB Chiropractic Care PC, Rehab Choice Corp or Rehab Choice PT PC, ROM Medical PC, Shaker Hills Medical Diagnostic PC, SM Chiropractic PC, Star Medical and Diagnostic PLLC, Sutter Medical Care PC, Sylvia Lobo M.D., Tong Li M.D., Triboro Med Supply Inc., Upper Chesapeake Medical Center, Victory Medical Diagnostics PC, and VIP Medical Supplies Inc. (the non-answering provider defendants), (2) summary judgment pursuant to CPLR 3212 as against Five Boro Psychological & Licensed Master Social Work Services PLLC, Linden Equipment Inc., Silver Lotus Acupuncture PC, Utopia Equipment Inc., Bay Needle Care Acupuncture PC, and Benoit Chiropractic PC (the answering provider defendants), (3) a judgment permanently staying all arbitrations or proceedings for no-fault benefits

arising from the subject motor vehicle accident on February 4, 2011, (4) a judgment permanently barring any arbitration or proceeding for no-fault benefits arising from the subject motor vehicle accident of February 4, 2011, and (5) a judgment declaring that the plaintiffs' denial of no-fault-benefits arising from the accident was valid on the basis of fraudulent injury claims by the individual defendants for no-fault reimbursement arising from the subject motor vehicle accident of February 4, 2011. No opposition is submitted.

II. DISCUSSION

A. Default Judgment

CPLR 3215(c) requires that any motion for a default judgment be made within one year and that any untimely motion be denied and the complaint dismissed as abandoned, upon motion or the court's own motion, absent "sufficient cause" shown. See Seide v Calderon, 126 AD3d 417 (1st Dept. 2015); Diaz v Perez, 113 AD3d 421 (1st Dept. 2014); Utak v Commerce Bank, Inc., 88 AD3d 522 (1st Dept. 2011). The summons and complaint in this action were filed on July 31, 2012, and the affidavits of service submitted with the instant motion indicate that service of the summons and complaint was made upon the defendants in August 2012. The instant motion was not filed until November 20, 2017, more than five years after the defendants' time to answer had expired. The

plaintiffs proffer no reason for that delay nor any authority condoning such a delay. Since the plaintiffs have failed to demonstrate "sufficient cause" (CPLR 3215[c]), their motion for leave to enter a default judgment against the individual defendants and the non-answering provider defendants is denied, and the complaint is dismissed as against them.

B. Summary Judgment

As to the branch of the plaintiff's motion seeking summary judgment, the plaintiffs have established their prima facie entitlement to judgment as a matter of law by submitting proof in admissible form that they properly denied coverage on the basis that the subject motor vehicle collision in which the individual defendants claimed to have been injured was not accidental but was intentional or staged, and thus not a covered incident under the subject no-fault policy. "An intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance." Matter of Liberty Mut. Ins. Co. v Goddard, 29 AD3d 698, 699 (2nd Dept 2006); see Matter of GEICO v Robbins, 15 AD3d 484 (2nd Dept. 2005). The proof includes the sworn deposition testimony of the individual defendants at their examinations under oath (EUOs), as well as the affidavits of the plaintiffs' Special Investigations Unit investigator and of their claims representative, and a

report and affidavit of a biomedical engineer who conducted a scientific study of the accident.

The proof is sufficient to establish, prima facie, that the subject accident was either staged or intentional, and the injuries claimed were not, and could not have been, sustained as a consequence of the collision. This evidence includes factual proof and expert opinion that (a) any damage to the insured vehicle was minuscule, (b) the subject collision with a stopped car occurred when the insured vehicle was traveling less than 10 miles per hour, (c) the EUO testimony of the individual defendants contradicted one another as to where the accident occurred, whether the vehicle was in motion during the accident, where they were stopped, and where the supposed adverse vehicle traveled following the occurrence, (d) the injuries claimed were exaggerated beyond what a reasonable person would expect from the collision that they described, and the treatment sought was excessive, and (e) the plaintiffs' investigation revealed no evidence that there was another vehicle involved in the accident. See DSD Acupuncture, P.C. v Met Life Auto & Home, 49 Misc 3d 153(A) (App Term, 2nd Dept, 2nd & 11th Jud. Dists. 2015); 21st Century Ins. Co. v Peebles, 2015 NY Slip Op 31695(U), 2015 N.Y. Misc. LEXIS 3255 (Sup Ct, N.Y. County 2015); cf. Nationwide Gen. Ins. Co. v Bates, 130 AD3d 795 (2nd Dept 2015). Having defaulted on the motion, the answering provider defendants have failed to

raise any triable issues of fact. See CPLR 3212; Alvarez v Prospect Hospital, 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Therefore, the branch of the motion seeking summary judgment as against that defendant is granted.

C. Other Relief

The plaintiffs seek a judgment permanently staying and permanently enjoining all arbitrations or proceedings arising from the subject occurrence on February 4, 2011, and a judgment declaring that the plaintiffs' denial of no-fault-benefits arising from the occurrence was valid on the basis of fraudulent misrepresentations of the individual defendants. This relief is granted for the reasons set forth above.

The court notes that the plaintiffs previously discontinued the action as against (1) defendant Stand Up MRI of Brooklyn PC, by stipulation dated August 24, 2012, (2) defendant Med Equipments Service Inc., by stipulation dated March 10, 2014, and (3) defendant Upper Chesapeake Medical Center, by stipulation dated November 29, 2017.

IV. CONCLUSION

In light of the foregoing, it is

ORDERED that the branch of the plaintiffs' motion which is for leave to enter a default judgment is denied, and the

complaint is dismissed as against as against Ronald Hayes, Lonnie Jefferson and Ty-Asia Maracus (the individual defendants), and A & F Medical PC, Able Orthopedic & Sports Medicine PC, Apple Medical Supplies, Inc., Bronx Chiropractic Service PC, Crimson Chiropractic P.C., Hillside Surgicare, Independent PT Care PC, Mobility Experts Medical PC, New Century Medical Diagnostic PC, New Millenium Medical Imaging PC, Pain Management Center of NJ, Parkview Advanced Medical PC, Physical Therapy Connection PC, Pitkin Medical Diagnostics PC, Pugsley Chiropractic PC, RB Chiropractic Care PC, Rehab Choice Corp or Rehab Choice PT PC, ROM Medical PC, Shaker Hills Medical Diagnostic PC, SM Chiropractic PC, Star Medical and Diagnostic PLLC, Sutter Medical Care PC, Sylvia Lobo M.D., Tong Li M.D., Triboro Med Supply Inc., Upper Chesapeake Medical Center, Victory Medical Diagnostics PC, and VIP Medical Supplies Inc. (the non-answering provider defendants), and the branch of the plaintiffs' motion which is for summary judgment as against Five Boro Psychological & Licensed Master Social Work Services PLLC, Linden Equipment Inc., Silver Lotus Acupuncture PC, Utopia Equipment Inc., Bay Needle Care Acupuncture PC, and Benoit Chiropractic PC (the answering provider defendants) is granted; and it is further,

ADJUDGED and DECLARED that the plaintiff has no duty to reimburse the answering provider defendants for treatment they rendered or equipment and supplies they provided to the

individual defendants for injuries arising from the motor vehicle accident that occurred on February 4, 2011, which injuries and occurrence are the basis of claims made under insurance policy number A02-228-335807-40; and it is further,

ADJUDGED AND DECLARED that the plaintiff's denial of no-fault-benefits arising from the motor vehicle accident that occurred on February 4, 2011, in connection with claims made under insurance policy number A02-228-335807-40, was valid; and it is further,

ADJUDGED that all actions, proceedings or arbitrations for no-fault benefits arising from injuries alleged to have been sustained by the individual defendants as a result of the February 4, 2011 motor vehicle accident are permanently stayed; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order.

This constitutes the Decision, Order, and Judgment of the court.

Dated: 6/15/18

ENTER: 
J.S.C.

HON. NANCY M. BANNON