

Hereford Ins. Co. v A to Z Med. Care, P.C.

2020 NY Slip Op 33164(U)

September 23, 2020

Supreme Court, New York County

Docket Number: 654162/2019

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK

PART

IAS MOTION 38EFM

Justice

-----X

HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

A TO Z MEDICAL CARE P.C., SPINAL CARE
CHIROPRACTIC P.C., ZQZ ACUPUNCTURE P.C.,
ROCKAWAY COMPLETE CHIROPRACTIC, P.C., BIG
APPLE MEDICAL EQUIPMENT, CUSTOM RX PHARMACY
LLC, ARIS DIAGNOSTIC MEDICAL, PLLC, NEW YORK
MEDICAL & DIAGNOSTIC CARE P.C., NANUM
ACUPUNCTURE P.C., SANTA BARBARA PT P.C.,
ULTIMATE MASSAGE THERAPY, P.C., VALLABH
MEDICAL P.C., CENTRAL PARK PHYSICAL MEDICINE,
P.C., WELLNESS PHYSICAL THERAPY REHABILITATION,
P.L.L.C., RAF SPORTS CHIROPRACTIC P.C., FAMILY
MEDICAL CARE, P.C., COREY MILES and CAPRICE
BEAUFORD,

Defendants.

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INDEX NO.	654162/2019
MOTION DATE	10/30/2019
MOTION SEQ. NO.	001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion of plaintiff Hereford Insurance Company (“Plaintiff”) for entry of a default judgment against defendants A to Z Medical Care P.C., Spinal Care Chiropractic, P.C., ZQZ Acupuncture P.C., Rockaway Complete Chiropractic, P.C., Big Apple Medical Equipment, Custom Rx Pharmacy, LLC, Aris Diagnostic Medical, PLLC, New York Medical & Diagnostic Care P.C., Nanum Acupuncture P.C., Santa Barbara PT P.C., Ultimate Massage Therapy, P.C., Vallabh Medical P.C., Central Park Physical Medicine, P.C., Wellness Physical Therapy Rehabilitation, P.L.L.C., RAF Sports Chiropractic P.C., Corey Miles

(“Miles”), and Caprice Beauford (“Beauford”) (together, “Defendants”) is granted on default and without opposition.¹

Plaintiff is the issuer of an insurance policy issued under Policy No. CA262815 (the “Policy”), under which Miles and Beauford (together “Claimants”) made claims for no-fault benefits in connection with an alleged motor vehicle collision on January 13, 2019 (the “collision”). The remaining defendants are medical providers who have made claims to Plaintiffs as assignees of the Claimants. On July 22, 2019, Plaintiff commenced this action by filing a summons and complaint seeking declaratory and injunctive relief for present and future claims arising from the incident. All Defendants were served with process and none have answered or otherwise appeared in the action. Plaintiff now moves for entry of a default judgment against all Defendants.

A plaintiff that seeks entry of a default judgment for a defendant’s failure to answer the complaint must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant’s default (CPLR 3215[a], [f]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

¹ The action was previously discontinued by stipulation against defendant Family Medical Care, P.C. (NYSCEF Doc. No. 20).

Plaintiff has satisfied its burden on the motion by submitting an affirmation of its counsel, Timothy R. Bishop, Esq., with exhibits thereto, which demonstrates proof of service of the summons and complaint on all Defendants and proof of default, and the affidavits of Stephen Englert, an investigator for Plaintiff, which demonstrate proof of the facts constituting Plaintiffs' claims. The Englert affidavit sets forth the basis for the denial of coverage, as supported by the Examination Under Oath ("EUO") transcripts of both Claimants that are annexed thereto. As set forth in the Englert affidavit, at the time of the collision, the Claimants were occupants of the vehicle insured by Plaintiff, which was being driven by non-party Arthur Bryant ("Bryant"). The vehicle was parked when it was allegedly struck by a second vehicle. According to the police report, which is annexed to the Bishop affirmation, the vehicle's airbags did not deploy; neither claimant reported injuries at the scene of the collision; and both refused medical treatment (Bryant aff. ¶ 7).

The circumstances of the collision caused Plaintiff to request an EUO of each Claimant. At the EUOs, the Claimants testified to several circumstances that caused Plaintiff to form a founded belief that the alleged injuries of the Claimants and any subsequent No-Fault treatment submitted by the Defendants did not arise from an insured event or were not causally related to the January 13, 2019 collision, and Hereford denied all claims on that basis (*id.* ¶ 13). The basis of the founded belief included, *inter alia*, conflicting testimony from the Claimants regarding where they first learned of the clinics that provided the purported treatment for their alleged injuries; testimony that they received free treatment at the clinics and free transportation to and from the clinics; testimony that each Claimant received multiple MRIs without explanation; and testimony that they had each received treatment several times a week for months without any change in their treatment plan (*id.* ¶ 12). Miles also testified that he had been in two prior auto

collisions in 2017, and when Plaintiff's attorneys "presented him with eight auto accidents with his name at the addresses he provided, Miles admitted that he was involved in more than the two collisions in 2017 but stated that he could not recall how many and when they occurred" (*id.*). The EUO testimony provided was sufficient for Plaintiff to form a founded belief sufficient to disclaim coverage (*Central Gen. Hosp. v. Chubb Group of Ins. Cos.*, 90 N.Y.2d 195, 199 [1997]). Plaintiffs have, therefore, demonstrated their entitlement to a default judgment.

Accordingly, it is

ORDERED that the motion of plaintiff Hereford Insurance Company for entry of a default judgment against defendants A to Z Medical Care P.C., Spinal Care Chiropractic, P.C., ZQZ Acupuncture P.C., Rockaway Complete Chiropractic, P.C., Big Apple Medical Equipment, Custom Rx Pharmacy, LLC, Aris Diagnostic Medical, PLLC, New York Medical & Diagnostic Care P.C., Nanum Acupuncture P.C., Santa Barbara PT P.C., Ultimate Massage Therapy, P.C., Vallabh Medical P.C., Central Park Physical Medicine, P.C., Wellness Physical Therapy Rehabilitation, P.L.L.C., RAF Sports Chiropractic P.C., Corey Miles, and Caprice Beauford is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff has no duty to pay any No-Fault benefits, in the form of sums, monies, damage, awards, or benefits to A to Z Medical Care P.C., Spinal Care Chiropractic, P.C., ZQZ Acupuncture P.C., Rockaway Complete Chiropractic, P.C., Big Apple Medical Equipment, Custom Rx Pharmacy, LLC, Aris Diagnostic Medical, PLLC, New York Medical & Diagnostic Care P.C., Nanum Acupuncture P.C., Santa Barbara PT P.C., Ultimate Massage Therapy, P.C., Vallabh Medical P.C., Central Park Physical Medicine, P.C., Wellness Physical Therapy Rehabilitation, P.L.L.C., RAF Sports Chiropractic P.C., Corey Miles, and Caprice Beauford, their agents, employees, assignees, or heirs arising out of any

current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover No-Fault benefits for the January 13, 2019 collision referenced in the complaint (also known as claim number 81836); and it is further

ORDERED, ADJUDGED and DECLARED that Hereford has no duty to provide defense and indemnification, liability coverage, or uninsured motorists coverage to Corey Miles and Caprice Beauford, their agents, employees, assignees, or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover for bodily injury for the January 13, 2019 collision referenced in the complaint (also known as claim number 81836); and it is further

ORDERED that this action shall be marked disposed.

This will constitute the decision and order of the court.

ENTER:

<u>9/23/2020</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED