State Farm Mut. Auto. Ins. Co. v Advanced Pain Care Med. P.C.
2020 NY Slip Op 33537(U)
October 26, 2020
Supreme Court, New York County
Docket Number: 157430/2019
Judge: Carol Ruth Feinman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 28EFM

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- V -

ADVANCED PAIN CARE MEDICAL, P.C.,PUSHPA R. BHANSALI, PHYSICIAN, P.C.,ERNEST BUBERMAN, D.C., MOUNT SINAI DOCTORS FACULTY PRACTICE A/K/A FPA HOSPITAL BASED NON PAR MT, MEDCARE SUPPLY, INC.,MOUNT SINAI HOSPITALS GROUP, INC. D/B/A MT SINAI HOSPITAL QUEENS, NICA ACUPUNCTURE, P.C.,OCEAN ONE PHYSICAL THERAPY P.C.,OLEG BARSHAY, D.C., STAND-UP MRI OF BENSONHURST, P.C.,STANISLAV KAMINSKY DPT, PT, P.C.,MARTINE DELESCA, FLORENCE MICHAUD

Defendant.

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INDEX NO. 157430/2019

MOTION DATE 10/15/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. CAROL RUTH FEINMAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is decided as follows:

This civil action was brought by plaintiff to seek a declaratory judgment against all defendants herein. Plaintiff asserts that, based upon defendant Martine Delesca ("Delesca") violating the no-fault regulations, to wit: making a material representation regarding his/her residence and the primary garage location of the insured vehicle under the policy which was procured, plaintiff is not required to provide no fault insurance coverage benefits for the alleged claims under claim #32-6535-R60, relating to the collision involving defendant Delesca and passenger Florence Michaud ("Michaud") that occurred on October 22, 2018. Plaintiff asserts that the incident is a non-covered event under the no-fault regulations. The court notes that the defendant who filed an Answer herein deny such claims.

Plaintiff seeks an order herein granting a default judgment against the defaulting defendants herein, due to their failure to appear in the instant action, and declaring that plaintiff is not required to provide no-fault insurance coverage benefits to the defaulting defendants. There is no opposition submitted by any of the defaulting defendants herein.

Courts have the power to use their discretion in deciding to enter a default judgment. The law and public policy favor resolving disputes on their merits, and toward that end a liberal policy has been adopted with respect to opening default judgments in furtherance of justice so that parties may have their day in court. *See for Example, Picnic v Seatrain Lines, Inc.*, 117 AD2d 504 [1st Dept 1986]; *see also*, *Bishop v Galasso*, 67 AD2d 753 [3rd Dept 1979]; *Cappel v RKO Stanley Warner Theaters*, 61 AD2d 936 [1st Dept 1978]; *Capellino Abattoir, Inc. v Lieberman*, 59 AD2d 986 [3rd Dept 1977].

It is well-established that a party is entitled to a default judgment pursuant to CPLR 3215 upon submitting proof of proper service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing. *See for example, 154 E. 62 LLC v. 156 E. 62nd St. LLC*, 159 AD3d 498 [1st Dept 2018]; *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1st Dept 2016].

To satisfy the requirement of CPLR 3215(f), a party seeking to enter a default judgment must only submit some firsthand confirmation of the facts. The standard of proof to establish entitlement to a default judgment amounts only to some firsthand confirmation of the facts. Plaintiff, by reason of defendant's failure to answer, does not have the benefit of discovery, thus the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists. *See, Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, [2003]; *see also for example, St. Paul Fire & Mar Ins. Co.* v *A.L. Eastmond & Sons*, 233 AD2d 294 [1st Sept 1997]. *See also*, *Natl. Union Fire Ins. Co. of Pitt.* v *Sullivan*, 269 AD2d 149 [1st Dept 2000]; *Figueroa, et al v Relgold LLC*, 178 AD3d 425 [1st Dept 2019].

An insurer may disclaim all insurance coverage based upon the fact or founded belief that the alleged injury does not arise out of an insured incident. *See for example, Central Gen. Hosp. v. Chubb Grp. of Ins. Co.*, 90 NY2d 195, [1997]. The No-Fault insurer must demonstrate the facts elicited during an investigation that make up the founded belief. Circumstantial evidence is sufficient to prove such facts if a party's conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence. *See for example, Benzaken v. Verizon Communications, Inc.*, 21 AD3d 864 [2d Dept 2005].

To avoid the entry of a default judgment, the defaulting party is required to demonstrate a reasonable excuse for its default and a potentially meritorious defense to the action. *See, Allstate Ins. Co v Austin*, 48 AD 3d 720 [2nd Dept 2008].

After a review of relevant statutory and case law, as well as the papers submitted in support of this application, including, inter alia, the Summons and Complaint, the Affidavits of Service of the Summons and Complaint, and an Affirmation that defendants were served notice of the instant Notice of Motion and accompanying exhibits, and sufficient Affidavit facts constituting plaintiff's claim herein, the court finds that plaintiff has satisfied the statutory requirements to warrant consideration of a default judgment pursuant to CPLR §3215. The defaulting defendants have not appeared in the instant action, have not opposed the instant motion, and have neither provided a reasonable excuse for default, nor a meritorious defense. Therefore, based upon the foregoing, the plaintiff's application for a default judgment is granted against the defaulting defendants.

Thus, it is hereby

ORDERED that Plaintiff's Motion for Default Judgment against the various defaulting defendants pursuant to C.P.L.R. §3215 is granted without opposition submitted; and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant ADVANCE PAIN CARE MEDICAL, P.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant ERNEST BUBERMAN, D.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant MOUNT SINAI DOCTORS FACULTY PRACTICE a/k/a FPA HOSPITAL BASED NON PAR MT, and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant MEDCARE SUPPLY, INC., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant MOUNT SINAI HOSPITALS GROUP, INC. d/b/a MT SINAI HOSPITAL QUEENS, and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant NICA ACUPUNCTURE, P.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant OCEAN ONE PHYSICAL THERAPY P.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant OLEG BARSHAY, D.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant STAND-UP MRI OF BENSONHURST, P.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant STANISLAV KAMINSKY DPT, PT, P.C., and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant MARTINE DELESCA, and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against defendant FLORENCE MICHAUD, and it is further

ORDERED and ADJUDGED that Defendant DELESCA made a material misrepresentation of his/her residence in procuring the insurance policy, and it has not been contradicted or opposed herein, and it is further

ORDERED and ADJUDGED that the policy would not have been issued, or would not have been issued under the same terms or at the same rate had plaintiff been aware of the true location of where defendant DELESCA's vehicle was garaged, or had defendant DELESCA given truthful information about same, and it is further

ORDERED and ADJUDGED that plaintiff is not required to pay no-fault insurance coverage benefits to the defaulting defendants herein, arising from the October 22, 2018 collision.

The forgoing constitutes the Decision and Order of the Court.

DATED: 10-26-, 2020
New York, NY

Carol Ruth Feinman, AJSC