

Country-Wide Ins. Co. v Ramirez

2021 NY Slip Op 30157(U)

January 12, 2021

Supreme Court, New York County

Docket Number: 656007/2019

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 656007/2019
MOTION DATE 1/12/2021
MOTION SEQ. NO. 001

- v -

VILMA RAMIREZ, ALFORD A. SMITH M.D., P.C., A TO Z
MEDICAL CARE P.C, ROCKAWAY COMPLETE
CHIROPRACTIC, P.C., CITIMEDICAL I, PLLC, CITY
MEDICAL OF UPPER EAST SIDE PLLC, JULES
FRANCOIS PARISIEN, CUSTOM RX PHARMACY, LLC,
ZQZ ACUPUNCTURE P.C., ONE TOUCH HEALTH
SUPPLY, INC., BIG APPLE MED EQUIPMENT INC,
AFFINITY RX INC, HEALTHALLIANCE HOSPITAL
BROADWAY CAMPUS, ULSTER RADIOLOGIC
ASSOCIATES, P.C., NEW YORK PRESBYTERIAN
HOSPITAL, SAUGERTIES HEALTH & WELLNESS, INC.
D/B/A ST. PETERS HEALTH PARTNERS MEDICAL, MAIN
STREET RADIOLOGY AT BAYSIDE, LLC, WARREN
STREET ORTHOPEDIC REHABILITATION, P.C., QUALITY
MEDICAL & SURGICAL SUPPLIES, L.L.C., FAST CARE
MEDICAL DIAGNOSTICS, PLLC, FIFTH AVENUE
SURGERY CENTER, LLC, AURORA MEDICAL SERVICES
PLLCC, RIGHT CHOICE SUPPLY INC, IGOR AMIGUD
PHYSICIAN P.C., BRONX MEDICAL HEALTH PROVIDER
P.C., ALL BEST TRADING, INC., KNIGHT
CHIROPRACTIC, P.C., CITY ONE MEDICAL P.C., NYRX
PHARMACY, INC, NEXTSTEP HEALING INC, YOUSSEF
PT, P.C., GOOD TIME ACUPUNCTURE P.C.

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment, the plaintiff moves pursuant to CPLR 3215 for leave to
enter a default judgment against defendants Vilma J. Ramirez (the individual defendant), A To Z
Medical Care PC, Rockaway Complete Chiropractic PC, Citimedical I PLLC, City Medical of
Upper East Side PLLC, Custom Rx Pharmacy LLC, ZQZ Acupuncture PC, One Touch Health
Supply Inc., HealthAlliance Hospital Broadway Campus, Ulster Radiologic Associates PC, New

York Presbyterian Hospital, Main Street Radiology at Bayside LLC, Warren Street Orthopedic Rehabilitation PC, Quality Medical & Surgical Supplies LLC, Fast Care Medical Diagnostics PLLC, Fifth Avenue Surgery Center LLC, Aurora Medical Services PLLC, Igor Amigud Physician PC, Bronx Medical Health Provider PC, All Best Trading Inc., Knight Chiropractic PC, City One Medical PC, NYRX Pharmacy Inc., Nextstep Healing Inc., Youssef PT PC and Good Time Acupuncture PC (the non-answering health-care defendants). The plaintiff seeks a declaration that it is not obligated to pay no-fault benefits to the individual defendant or the non-answering health-care defendants to reimburse them for treatment they rendered or medical equipment they provided to the individual defendant for injuries allegedly sustained in an auto accident on February 8, 2019 on the grounds that the eligible injured party defendant failed to appear for duly scheduled Examinations Under Oath (EUOs). No opposition was submitted.

The motion is granted inasmuch as the plaintiff has provided proof of timely service of the summons and complaint upon the defendants, proof of the facts constituting the claim, and proof of the defendants' defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1st Dept. 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455 [1st Dept. 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

The court notes that the plaintiff discontinued this action as against HealthAlliance Hospital Broadway Campus, Ulster Radiologic Associates PC, New York Presbyterian Hospital, Main Street Radiology at Bayside LLC, Warren Street Orthopedic Rehabilitation PC, Quality Medical & Surgical Supplies LLC, Fast Care Medical Diagnostics PLLC, Fifth Avenue Surgery Center LLC, Aurora Medical Services PLLC, Igor Amigud Physician PC, Bronx Medical Health Provider PC, All Best Trading Inc., Knight Chiropractic PC, City One Medical PC, NYRX Pharmacy Inc., Nextstep Healing Inc., Youssef PT PC and Good Time Acupuncture PC without prejudice on November 18, 2020. Thus, the instant is deemed withdrawn as against those defendants.

In the application for no-fault benefits, the individual defendant alleged, *inter alia*, that she was injured in a motor vehicle accident on February 8, 2019, and that she thereafter obtained medical treatment or medical supplies from the health-care defendants. According to the plaintiff, the health-care defendants sought payment under claim number 342723-001, as assignees of the individual defendant, for no-fault benefits under insurance policy number

VS7819134-18. See Insurance Law 5106(a); 11 NYCRR 65-1.1. The plaintiff received a series of at least three claims from March 22, 2019 through April 5, 2019. The plaintiff mailed its first notice for an EUO on April 10, 2019 scheduling the individual defendant's EUO on May 3, 2019. The individual defendant did not attend either the first EUO or the second rescheduled EUO on May 29, 2019. The plaintiff denied the insurance claims on May 31, 2019. The plaintiff now seeks default judgment stating that it is not required to pay the no-fault benefits as the individual defendant's coverage is vitiated.

The plaintiff's submissions demonstrate that the initial notice for an examination under oath (EUO) on April 10, 2019 was timely mailed to the individual defendant within 15 business days of its receipt of the health-care defendants' applicable NF-3 forms, as required by 11 NYCRR 65-3.5(b). See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1st Dept. 2017); National Liability & Fire Ins. Co. v Tam Med. Supply Corp., 131 AD3d 851 (1st Dept. 2015); American Tr. Ins. Co. v Jaga Med. Servs., P.C., 128 AD3d 441 (1st Dept. 2015). They also show that the individual defendant did not appear for the initially scheduled EUO, and was provided timely notice of a rescheduled EUO, but failed to appear for that as well. The plaintiff consequently provided *prima facie* evidence that, by failing to appear for an EUO, the individual defendant breached a condition precedent to the effectiveness of no-fault insurance coverage, thus vitiating that coverage. See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., *supra*; Hertz Corp. v Active Care Med. Supply Corp., 124 AD3d 411 (1st Dept. 2015); Allstate Ins. Co. v Pierre, 123 AD3d 618 (1st Dept. 2014). Moreover, having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003). Thus, the plaintiff's motion is granted.

As in this case, CPLR 3215(a) requires that when a default judgment is taken against fewer than all the defendants, the action is severed as against the remaining defendants. See Woodson v Mendon Leasing Corp., 259 AD2d 304 (1st Dept. 1999); *see also* Balanta v Stanline Taxi Corp., 307 AD2d 1017 (2nd Dept. 2003); Holt v Holt, 262 AD2d 530 (2nd Dept. 1999). A judgment obtained by a plaintiff as against a defaulting defendant does not entitle the plaintiff to collateral estoppel against the non-defaulting defendants who would otherwise be denied a full and fair opportunity to litigate issues of liability. See Woodson v Mendon Leasing Corp., *supra*; Frolish v Ryder Truck Rental, *supra*.

Accordingly, it is,

ORDERED that upon the plaintiff's notice of discontinuance filed November 19, 2020 this motion is deemed withdrawn as against defendants HealthAlliance Hospital Broadway Campus, Ulster Radiologic Associates PC, New York Presbyterian Hospital, Main Street Radiology at Bayside LLC, Warren Street Orthopedic Rehabilitation PC, Quality Medical & Surgical Supplies LLC, Fast Care Medical Diagnostics PLLC, Fifth Avenue Surgery Center LLC, Aurora Medical Services PLLC, Igor Amigud Physician PC, Bronx Medical Health Provider PC, All Best Trading Inc., Knight Chiropractic PC, City One Medical PC, NYRX Pharmacy Inc., Nextstep Healing Inc., Youssef PT PC and Good Time Acupuncture PC; and it is further,

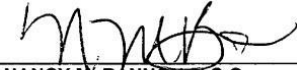
ORDERED that the plaintiff's motion for leave to enter a default judgment against the remaining non-answering defendants Vilma J. Ramirez, A To Z Medical Care PC, Rockaway Complete Chiropractic PC, Citimedical I PLLC, City Medical of Upper East Side PLLC, Custom Rx Pharmacy LLC, ZQZ Acupuncture PC, One Touch Health Supply Inc. is granted, without opposition, and it is further,

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to the defendant Vilma J. Ramirez for injuries that she allegedly sustained in a motor vehicle accident on February 8, 2019, or to defendants A To Z Medical Care PC, Rockaway Complete Chiropractic PC, Citimedical I PLLC, City Medical of Upper East Side PLLC, Custom Rx Pharmacy LLC, ZQZ Acupuncture PC, One Touch Health Supply Inc., to reimburse them for treatment they rendered or medical equipment they provided to the individual defendant, under policy number VS7819134-18, claim number 342723-001 for injuries that she allegedly sustained in the motor vehicle accident of February 8, 2019; and it is further,

ORDERED that this action is severed and continued as against answering defendants Alford A. Smith MD PC, Jules Francois Parisien, Big Apple Med Equipment Inc., and Affinity Rx Inc., 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 and Order of the court.



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

1/12/2021

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE