

Country-Wide Ins. Co. v Wilson
2021 NY Slip Op 30213(U)
January 21, 2021
Supreme Court, New York County
Docket Number: 651737/2020
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14
Justice
INDEX NO. 651737/2020
COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff, MOTION DATE 01/19/2021, 01/19/2021
- v - MOTION SEQ. NO. 001 002

ANDRENE T. WILSON, JACOBI MEDICAL CENTER,
HEALTHWAY MEDICAL CARE, P.C., ATLANTIC MEDICAL
& DIAGNOSTIC, P.C. F/K/A BRONX MEDICAL &
DIAGNOSTIC, P.C., ACUPUNCTURE NOW, P.C., SB
CHIROPRACTIC P.C., JULES FRANCOIS PARISIEN MD,
NU AGE MED SOLUTIONS INC., NORTH BRONX
FACULTY PRACTICE CORPORATION, G.M. WELLNESS
MEDICAL, P.C., SALUTEM PRODUCTS CORP.

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 46

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for JUDGMENT - SUMMARY

Motion sequence numbers 001 and 002 are consolidated for disposition. The motion (MS001) by plaintiff for a default judgment against defendants ANDRENE T. WILSON, ATLANTIC MEDICAL & DIAGNOSTIC, P.C. F/K/A BRONX MEDICAL & DIAGNOSTIC, P.C., NU AGE MED SOLUTIONS INC., NORTH BRONX FACULTY PRACTICE CORPORATION, G.M. WELLNESS MEDICAL, P.C., SALUTEM PRODUCTS CORP. is granted on default.

The motion (MS002) by plaintiff for summary judgment against defendants Healthway Medical Care, P.C., Acupuncture Now, P.C., SB Chiropractic P.C. and Jules Francois Parisien MD (the “Answering Defendants”) is granted.

Background

Plaintiff seeks an order declaring that it need not honor or pay any claims arising out of an allegedly accident that took place on April 20, 2018 on the ground that the injured defendant (Wilson) failed to show up for two duly-noticed IMEs.

In opposition, the Answering Defendants contend that plaintiff failed to meet its prima facie burden. They claim that plaintiff did not comply with various time requirements prescribed by insurance regulations and that plaintiff did not adequately prove the merits of its purported “now-show defense.” The Answering Defendants maintain that plaintiff only offers a conclusory assertion that the IME notices were properly mailed.

In reply, plaintiff emphasizes that its request for an IME is a condition precedent to reimbursements from a medical provider and, if not complied with, is a basis to deny no-fault benefits.

Discussion

“The failure to appear for IMEs requested by the insurer ‘when, and as often as, [it] may reasonably require’ (Insurance Department Regulations [11 NYCRR] § 65–1.1) is a breach of a condition precedent to coverage under the No–Fault policy, and . . . when defendants' assignors failed to appear for the requested IMEs, plaintiff had the right to deny all claims retroactively to the date of loss, regardless of whether the denials were timely issued” (*Unitrin Advantage Ins.*

Co. v Bayshore Physical Therapy, PLLC, 82 AD3d 559, 560 [1st Dept 2011] [internal quotations and citation omitted]).

Here, plaintiff established its prima facie case for requesting IMEs and defendant Wilson's failure to show up for the IMEs through the affidavits of Kyaw Nyein (NYSCEF Doc. No. 40), Annie Persaud (NYSCEF Doc. No. 41), and Anita Megnauth (NYSCEF Doc. No. 42). The Answering Defendants did not raise an issue of fact; instead, they asserted generalized arguments about why plaintiff did not meet its burden. They did not cite any specific reason why the Court should ignore these affidavits, which establish that plaintiff reviewed the claims from the Answering Defendants, requested IMEs from defendant Wilson and then Wilson failed to appear.

Accordingly, it is hereby


ORDERED that the motion (MS001) by plaintiff for a default judgment against defendants ANDRENE T. WILSON, ATLANTIC MEDICAL & DIAGNOSTIC, P.C. F/K/A BRONX MEDICAL & DIAGNOSTIC, P.C., NU AGE MED SOLUTIONS INC., NORTH BRONX FACULTY PRACTICE CORPORATION, G.M. WELLNESS MEDICAL, P.C., SALUTEM PRODUCTS CORP. is granted on default; and it is further

ORDERED that the motion (MS002) by plaintiff for summary judgment against defendants Healthway Medical Care, P.C., Acupuncture Now, P.C., SB Chiropractic P.C. and Jules Francois Parisien MD is granted; and it is further

DECLARED that defendant Wilson is not an eligible person entitled to no fault benefits related to the April 20, 2018 accident, plaintiff's insurance policy RT7116050 17 and Claim No.:

000335941-001, and plaintiff need not honor or pay any claims from the defendants in this action relating to the above-cited accident, insurance policy and claim number.

1/21/2021
DATE


ARLENE P. BLUTH, J.S.C.

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