State Farm Mut. Auto. Ins. Co. v AK Global Supply Corp
2021 NY Slip Op 31016(U)
April 2, 2021
Supreme Court, New York County
Docket Number: 158918/2019
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE **PART** IAS MOTION 12

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- v -

AK GLOBAL SUPPLY CORP, ATLAS PT PC, BLISS ACUPUNCTURE PC, CITY WIDE HEALTH FACILITY INC, COMPREHENSIVE PSYCHOLOGICAL PC, CONFIDENT MEDICAL SERVICES, HARBOR MEDICAL GROUP, PC, M&D ELITE PHARMACY LLC, MEDICAL SUPPLY OF NY CORP, METRO PAIN SPECIALIST PC, MG CHIROPRACTIC PC, MOVE FREE REHAB PT PC, NEW YORK CORE CHIROPRACTIC, P.C., RED OAK MEDICAL PC, RL CHIROPRACTIC DIAGNOSTIC PC, S I D IMAGING INC, SEASONED ACUPUNCTURE, PC, SINGH PT PLLC, CHARLES GUILLAUME, JEAN GEDIN, ORELIEN HUGGINS, JOHN DOE, SHENIGTHDER LOISEAU,

Defendants.

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INDEX NO. 158918/2019

MOTION DATE _____

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64 were read on this motion to renew.

By notice of motion, submitted on default, plaintiff moves for leave to renew its prior motion for a default judgment, which was denied on various grounds by decision and order dated September 30, 2020. (NYSCEF 56), contending that I erred in doing so.

One of the grounds for the denial of the prior motion was plaintiff's failure to submit a certified police report. While the police report bears a small certification on it which I apparently overlooked, the report is nonetheless not probative as it contains no admission by the claimants

establishing or even permitting the inference that the accident was staged.

Plaintiff also argues that I overlooked the fact that one of the claimant's examinations under oath was timely scheduled. While it asserts that the claim was date-stamped as having been received in December 2018, the sole pertinent claim form submitted is date-stamped "11/13/18" on all three pages of the claim, and no other date is recorded thereon. (NYSCEF 42). That plaintiff received a medical bill in December 2018 is thus irrelevant. (*See eg, Hertz Vehicles, LLC v Best Touch PT, P.C.*, 162 AD3d 617 [1st Dept 2018] [insurer's receipt of no-fault benefit claim form is operative event for purposes of starting 15 business-day period for scheduling EUO]).

Plaintiff offers no authority in support of its argument that the affidavit of service need not reflect the times at which the process server attempted to serve process on the claimant-defendants. Pursuant to CPLR 306(c), when attempted service is made on a person, an affidavit of service must contain "the dates, addresses and the times of attempted service."

Even though the defendants at issue defaulted on the motion, plaintiff still bears the burden of establishing its entitlement to a default judgment. (*See e.g., Interboro Ins. Co. v Johnson,* 123 AD3d 667 [2d Dept 2014] [party seeking default judgment must establish viable cause of action and court may review evidence submitted by movant; "the proof submitted in support of (insurer's) motion failed to set forth sufficient facts to enable the Supreme Court to determine that the medical services provided to (the claimant) by the remaining defendants were unrelated to the automobile accident"]).

Here, plaintiff asserts the following:

1) The policy was issued 22 days before the alleged collision and was procured online at an Albany address;
2) The prior owner of the insured vehicle told State Farm that he had sold the vehicle to the current owner without a transferrable title;

3) The collision occurred late at night in Queens, far from Albany where the policy was procured;

4) Brown, the driver of the adverse vehicle, told police that claimants were not in the insured vehicle when the collision occurred and jumped into the vehicle after the fact; and

5) Claimants began undergoing elaborate and identical treatments the next day following the alleged collision, even though the police report indicated that there were no reported injuries at the scene.

(NYSCEF 61).

Plaintiff offers no explanation as to why it would be suspicious that an insurance policy was issued three weeks before the accident and procured by someone at an Albany address, or that the accident took place in Queens rather than Albany.

Moreover, plaintiff mischaracterizes the content of the police report, which reflects that the adverse driver told the police officer that he did "not believe" that claimants' vehicle had any passengers in it at the time of the accident. There is no mention of anyone jumping into the vehicle, and the report itself shows that there were three passengers in the vehicle. The witness to the accident, who wrote an affidavit for plaintiff, opines that it "looked like the [accident] was done on purpose," which is conclusory and unsupported. The police report also reflects no address or whether any injuries were reported at the scene. (NYSCEF 41; 43).

Plaintiff cites *Unitrin Advantage Ins. Co. v 21st Century Pharm.* for the proposition that hearsay proof of fraud constitutes a sufficient basis on which to grant a default judgment to an insurer in a no-fault action. The decision, which is precisely one line, contains no mention of proof at all. (158 AD3d 450 [1st Dept 2018]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion for leave to reargue is denied.

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4/2/2021
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE