SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** IAS MOTION 37EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY

Plaintiff,

- v -

EXCEL SURGERY CENTER, L.L.C. A/A/O VERONICA DELCARMEN ESCALA,

Defendant.

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INDEX NO. 150749/2019

MOTION DATE 03/23/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents and for the reasons set forth hereinbelow, the instant motion by defendant, Excel Surgical Center, LLC a/a/o Veronica Delcarmen Escala, pursuant to CPLR 5015, to vacate a default judgment that the Clerk entered on or about March 4, 2020 in favor of plaintiff, American Transit Insurance Company, and against defendant is granted.

Background

The Underlying Accident

On December 23, 2015, the assignor ("the patient") of defendant, Excel Surgical Center, LLC, was allegedly injured in a motor vehicle accident. Defendant submitted claim(s) to plaintiff, American Transit Insurance Company, for reimbursement for medical treatment that it allegedly provided to the patient for injuries that she allegedly sustained from the subject alleged accident. Plaintiff and defendant dispute whether plaintiff is obligated to pay No-Fault benefits to defendant. Plaintiff asserts, among various points, that (1) the medical treatment arose from an "improper self-referral, which is illegal under both New York and New Jersey law and which constitutes a complete bar to payment"; (2) the subject treatment was not medically necessary; and (3) the subject alleged injuries did not arise out of the subject alleged accident. (NYSCEF Documents 1 and 8.)

The Underlying Arbitration

The matter proceeded to arbitration before the American Arbitration Association, and defendant sought $20,762.16 in reimbursement from plaintiff "for facility fees, anesthesia services, injections, radiological guidance, and supplies due" arising out of a December 13, 2016 arthroscopic surgery that Dr. Raz Winiarsky performed that allegedly arose from the subject alleged accident (NYSCEF Documents 8 and 20). On July 26, 2018, Arbitrator Aladar Gyimesi,

Esq. entered an award ("the Award") in favor of defendant in the amount of $18,762.16 (NYSCEF Doc. 17). On January 9, 2019, Master Arbitrator Joseph J. O'Brien Jr., Esq. affirmed the Award (NYSCEF Doc. 18).

The Instant Action and This Court's Decision and Order in Motion Seq. 001

On or about January 24, 2019, plaintiff commenced the instant action, seeking a judgment against defendant (1) declaring that plaintiff is not liable to defendant for No-Fault benefits; (2) declaring that the services that defendant allegedly received were not medically necessary; and (3) awarding costs and disbursements to plaintiff (NYSCEF Doc. 1, at 4). On February 7, 2019, pursuant to Limited Liability Company Law § 303, plaintiff served the pleadings upon defendant via the Secretary of State of New York (NYSCEF Doc. 3). Defendant did not answer the instant complaint or otherwise appear.

On January 14, 2020, plaintiff moved (Seq. 001), pursuant to CPLR 3215, for a default judgment against defendant declaring that (1) defendant's subject alleged injuries did not arise out of an "insured or covered incident"; (2) there is no causal relationship between the subject alleged accident and the surgery that defendant performed on the patient; (3) plaintiff is not obligated to pay No-Fault benefits to defendant; and (4) plaintiff is not obligated to pay pending and/or future No-Fault claims that defendant has submitted or will submit (NYSCEF Doc. 4). Defendant neither opposed nor otherwise respondent to that motion for a default judgment (Seq. 001). On January 23, 2020, pursuant to Limited Liability Company Law § 303, plaintiff served the notice of motion (Seq. 001) and supporting papers upon defendant via the Secretary of State of New York (NYSCEF Doc. 10).

By Decision and Order dated March 4, 2020, this Court granted plaintiff's motion (Seq. 001) for a default judgment against defendant (NYSCEF Doc. 11).

The Instant Motion

Defendant now moves (Seq. 002), pursuant to CPLR 5015, to vacate the default judgment that the Clerk entered on or about March 4, 2020 in favor of plaintiff and against defendant (NYSCEF Doc. 12).

Defendant asserts that it has a reasonable excuse for its subject default, namely that "plaintiff had actual knowledge that Field Law Group, P.C. represented defendant in the underlying arbitration matter (AAA No. 99-17-1059-2852)" but failed to serve the subject summons and complaint and/or the subject notice of motion for a default judgment on said attorney. Defendant asserts that between August 28 and November 2, 2020, defendant sent "Demand for Payment" correspondence to plaintiff and a "Letter Complaint" to the New York State Department of Financial Services to collect on the Award. As defendant did not receive a response to either correspondence, defendant searched E-Courts on or about February 20, 2021 and discovered the subject summons and complaint and notice of motion in the instant action. Defendant asserts that, as plaintiff apparently served the subject summons and complaint approximately one month after the Master Arbitrator affirmed the Award, plaintiff had actual knowledge that Field Law Group, P.C. represented defendant in the underlying arbitration and should have been served with the papers in the instant action. According to defendant, said failure to serve Field Law

Group, P.C. denied defendant "a full and fair opportunity to appear, litigate and/or oppose the Judgment entered in this action." (NYSCEF Doc. 13.)

Defendant also submits that its documentary evidence (apparently the Award and the Master Arbitrator's affirmation thereof) demonstrates defendant's meritorious defense (NYSCEF Doc. 13).

In opposition, plaintiff asserts, inter alia, the following: (1) Limited Liability Company Law 303(a) states, in pertinent part, "service of process on such limited liability company shall be complete when the secretary of state is so served," and, thus, plaintiff served defendant properly; (2) defendant has not supported its motion with an affidavit from an individual with personal knowledge stating that defendant did not receive service of the subject pleadings and/or notice of motion; (3) the instant matter is a de novo action rather than a review of the Award and/or the Master Arbitrator's affirmation thereof, and, thus, plaintiff was not obligated to serve defendant's counsel; and (4) defendant has submitted only the Award and the Master Arbitrator's affirmation thereof, which constitute insufficient documentary evidence (NYSCEF Doc. 21).

In reply, defendant e-filed, inter alia, the subject bills and denials (NYSCEF Documents 30-31) and the March 30, 2020 affidavit of Olga Guzman, defendant's Office Manager (NYSCEF Doc. 29). Defendant asserts, essentially the following: (1) defendant did not receive the subject pleadings and notice of motion; and (2) there is neither a statute nor pertinent case law as to the documents that a movant must submit to demonstrate a meritorious defense (NYSCEF Doc. 28).

Discussion

CPLR 5015(a)(1) states the following:

> The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:
>
> 1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry;

"In order to successfully oppose a [motion for a] default judgment, a defendant must demonstrate a justifiable excuse for his [or her] default and a meritorious defense." Johnson v Deas, 32 AD3d 253, 254 (1st Dept. 2006) (internal quotation marks and citation omitted). "A determination of the sufficiency of the proffered excuse and the statement of merits rests within the sound discretion of the court." Marquez v 171 Tenants Corp., 161 Ad3d 646, 647 (1st Dept. 2018) (citations omitted). And, most importantly, as the First Department has explained, "a strong public policy exists in this State for resolving disputes on their merits … a liberal policy has been adopted with respect to opening default judgments in furtherance of justice so that the parties may have their day in court." Mate Picnic v Seatrain Lines, Inc., 117 AD2d 504, 508 (1st Dept. 1986).

Defendant has demonstrated both a reasonable excuse for its default in the instant matter and a meritorious defense. Plaintiff did not follow the ordinary course of litigation when it commenced the instant de novo action rather than commencing a special proceeding to vacate the Award and/or the Master Arbitrator's affirmation thereof and, further, by not serving the subject pleadings and/or the subject notice of motion on Field Law Group, P.C. (defendant's arbitration counsel). As defendant notes, plaintiff had actual knowledge that Field Law Group, P.C. represented defendant in the underlying arbitration; in fact, the Award even notes as such (NYSCEF Doc. 17). Pursuant to, inter alia, the March 30, 2021 affidavit of Olga Guzman, defendant's Office Manager (an individual with personal knowledge), defendant has established a reasonable excuse for its default, namely that defendant did not receive any notice of the subject action (NYSCEF Doc. 29). Additionally, defendant has submitted sufficient documentary evidence to establish a meritorious defense in the form of the Award and the Master Arbitrator's affirmation thereof, both favoring defendant against plaintiff in the amount of $18,762.16 (NYSCEF Documents 17-18).

This Court has considered plaintiff's other arguments and finds them to be unavailing and/or non-dispositive.

Therefore, this Court will grant defendant's motion, pursuant to CPLR 5015(a)(1), to vacate the default judgment that the Clerk entered on or about March 4, 2020 in favor of plaintiff and against defendant.

Conclusion

Thus, for the reasons stated hereinabove, the instant motion, pursuant to CPLR 5015(a)(1), by defendant, Excel Surgery Center, LLC a/a/o Veronica Delcarmen Escala, to vacate the default judgment that the Clerk entered on or about March 4, 2020 in favor of plaintiff, American Transit Insurance Company, and against defendant is hereby granted. The Clerk is hereby directed to enter judgment accordingly and, upon the subject vacatur, to restore the instant action to "active" status.

5/11/2021
DATE

ARTHUR F. ENGORON, J.S.C.

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