

State Farm Mut. Auto. Ins. Co. v Aviv Med., PC.

2022 NY Slip Op 33569(U)

October 17, 2022

Supreme Court, New York County

Docket Number: Index No. 157132/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO

PART

33

Justice

-----X

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 157132/2021

MOTION DATE 06/13/2022

MOTION SEQ. NO. 001

- v -

AVIV MEDICAL, PC, DIANNA BRUNO, EXTENSION PT PC, IA CHIROPRACTIC PLLC, KINGS COUNTY HOSPITAL, KNAPP ORTHO SERVICES, LEE ASSOCIATED DIAGNOSTIC LLC, METRO CHEMIST PHARMACY INC, OM PHYSICAL THERAPY, PETRYCHENKO PHYSICIANS PC, PROMETHEUS IMAGING LLC, QUEENS ARTHROSCOPY AND SPORTS MEDICINE, ROCKAWAY PARK MEDICAL PC, SILVER NEEDLE ACUPUNCTURE PC, STAR MEDICAL DIAGNOSTIC, TITAN DIAGNOSTIC IMAGING SERVICE, VNS PHARMACY, NYC FIRE DEPARTMENT EMS, MARDOCHE THERAZIN

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 53

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, and the motion being unopposed, Plaintiff State Farm Mutual Automobile Insurance Company's ("Plaintiff") motion for default judgment is granted.

This action arises out of an automobile collision reported to have occurred on October 26, 2020 (NYSCEF Doc. 1). Plaintiff seeks a declaration stating it is under no obligation to provide no-fault benefits to the insured, Mardoche Therazin ("Therazin"), and any of the medical providers he has assigned his benefits to, on the basis that it has a founded belief that the accident was staged and therefore is not covered under Therazin's automobile policy.

In particular, Plaintiff alleges (1) that the policies on both vehicles involved in the accident began shortly before the collision,; (2) the driver of the other vehicle involved in the collision,

Aikeem Feiton, has two prior claims reported to be potentially staged losses; (3) the insured vehicle's license plate from the DMV registry differed from the plates on the police report indicating the vehicle had false plates; (4) Therazin used a body shop that was previously associated with prior questionable claims, and (5) Therazin's attorney previously represented Feiton, the other driver involved in other potentially staged claims (NYSCEF Doc. 1 at ¶ 30). Plaintiff also claims Therazin's examination under oath ("EUO") testimony had multiple contradictions, including his alleged treatment and injuries differing from the bills submitted by medical providers, and his testimony that he called a man he knew only as "Boni" right after the loss and could not explain why (Plaintiff later alleges that "Boni" was a runner who steered Therazin for medical treatment) (*id.* at ¶ 32). Therefore, Plaintiff filed this Complaint on July 31, 2021 seeking declaratory judgment that it owes no coverage to Therazin or any of his assignees for no-fault payments related to the purported October 26, 2020 collision (*id.*).

In response to Plaintiff's Complaint, Defendants VNS Pharmacy, Aviv Medical, PC, IA Chiropractic PLLC, Rockaway Park Medical PC, Silver Needle Acupuncture PC, Dianna Bruno, and Om Physical Therapy filed Answers (NYSCEF Docs. 21, 24 and 48). Therefore, Plaintiff has moved for default judgment against the remaining Defendants that have not appeared (NYSCEF Doc. 30).

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulter's failure to appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that "defaulters are

deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]). Default judgment is appropriate where, as here, the conditions of CPLR 3215 have been satisfied and an insurer disclaims coverage on a founded belief that alleged injuries did not arise out of a reported accident (*State Farm Mutual Automobile Insurance Company v AK Global Supply Corp.*, 203 AD3d 556 [1st Dept 2022]).

The Court is satisfied that Plaintiff has complied with the service requirements of CPLR 3215(g) (NYSCEF Docs. 34, 38, 46). The Court is also satisfied that Plaintiff has complied with CPLR 3215 (f) by providing sufficient proof of the facts of its claim (NYSCEF Doc. 32, 39, 40, 41, 43). Further, Plaintiff has provided a non-military affidavit for Defendant Therazin (NYSCEF Doc. 35). Therefore, Plaintiff is entitled to default judgment against the defaulting defendants.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for default judgment against Extension PT PC, Kings County Hospital, Knapp Ortho Services, Lee Associated Diagnostic LLC, Petrychenko Physicians PC, Prometheus Imaging LLC, Queens Arthroscopy and Sports Medicine, Star Medical Diagnostic, Titan Diagnostic Imaging Service, NY Fire Department EMS, and Mardoche Therazin is granted; and it is further

ORDERED, ADJUDGED, AND DECLARED that Mardoche Therazin's alleged injuries and any subsequent No-Fault treatment submitted by Extension PT PC, Kings County Hospital, Knapp Ortho Services, Lee Associated Diagnostic LLC, Petrychenko Physicians PC, Prometheus Imaging LLC, Queens Arthroscopy and Sports Medicine, Star Medical Diagnostic, Titan Diagnostic Imaging Service, NY Fire Department EMS, and Mardoche Therazin, were not

causally related to the October 26, 2020 collision referenced in the Complaint (claim number 32-12X8-63R) and/or did not arise from an insured event; and it is further,

ORDERED, ADJUDGED, and DECLARED, that Plaintiff, by reason of no coverage, since Mardoche Therazin's alleged injuries and any subsequent No-Fault treatment submitted by Extension PT PC, Kings County Hospital, Knapp Ortho Services, Lee Associated Diagnostic LLC, Petrychenko Physicians PC, Prometheus Imaging LLC, Queens Arthroscopy and Sports Medicine, Star Medical Diagnostic, Titan Diagnostic Imaging Service, NY Fire Department EMS, and Mardoche Therazin, were not causally related to the October 26, 2020 collision referenced in the Complaint (claim number 32-12X8-63R), and/or did not arise from an insured event, is not required to pay any sums, monies, damages, awards and/or benefits to Extension PT PC, Kings County Hospital, Knapp Ortho Services, Lee Associated Diagnostic LLC, Petrychenko Physicians PC, Prometheus Imaging LLC, Queens Arthroscopy and Sports Medicine, Star Medical Diagnostic, Titan Diagnostic Imaging Service, NY Fire Department EMS, and Mardoche Therazin including but not limited to mandatory personal injury protection (No-Fault), additional personal injury protection, bodily injury and property damage liability, and supplemental uninsured/underinsured motorist coverage, in connection with the alleged incident of October 26, 2020 (claim number 32-12X8-63R); and it is further,

ORDERED that the Clerk of the Court is directed to enter judgment as against Defendants Extension PT PC, Kings County Hospital, Knapp Ortho Services, Lee Associated Diagnostic LLC, Petrychenko Physicians PC, Prometheus Imaging LLC, Queens Arthroscopy and Sports Medicine, Star Medical Diagnostic, Titan Diagnostic Imaging Service, NY Fire Department EMS, and Mardoche Therazin; and it is further

ORDERED that this action is severed and shall proceed against the remaining Defendants VNS Pharmacy, Aviv Medical, PC, IA Chiropractic PLLC, Rockaway Park Medical PC, Silver Needle Acupuncture PC, Dianna Bruno, and Om Physical Therapy; and it is further

ORDERED that Plaintiff shall serve a copy of this decision and order on all parties within seven (7) days of entry.

This constitutes the decision and order of the Court.

10/17/2022
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: