

Hereford Ins. Co. v Ng

2023 NY Slip Op 33312(U)

September 22, 2023

Supreme Court, New York County

Docket Number: Index No. 162564/2019

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

ALAN NG, ALLEN ROTHPEARL,MD PC,ANJANI SINHA
MEDICAL P.C.,ATLAS RADIOLOGY P.C.,BRONX
MEDICAL HEALTH PROVIDER P.C.,CLIFTON BURT PAIN
PHYSICIAN PC,CVS RX, INC.,ELIM ORIENTAL MEDICINE,
EVERGREEN PHYSICAL THERAPY REHABILITATION,
P.C.,GOOD TIME ACUPUNCTURE P.C.,HEALING TOUCH
PHYSICAL THERAPY P.C.,HILLSIDE CHIROPRACTIC
P.C.,INNOVATIVE PAIN MEDICINE, PC,KNIGHT
CHIROPRACTIC, P.C.,LONG ISLAND NEUROLOGICAL,
PC,M & D ELITE PHARMACY, LLC,MAIN STREET
RADIOLOGY BAYSIDE, MSJR OF QUEENS, PC,NASSAU
CHIROPRACTIC SERVICES P.C.,NASSAU QUEENS
MEDICAL P.C.,NEXTSTEP HEALING, INC, NYEEQASC,
LLC,NYRX PHARMACY, INC.,ORTHOMOTION REHAB
DME LLC,PRC SUPPLIES INC, PROGRESSIVE- HUDSON
ANESTHESIA, LLC,PROTECHMED INC, QUALITY
MEDICAL SURGICAL SUPPLIES LLC,RAPAPUNCTURE
MEDICAL P.C.,SEDATION VACATION PERIOPERATIVE
MEDICINE PLLC,SINHA ORTHOPEDICS PC,SKY
RADIOLOGY P.C.,SURGICORE SURGICAL CENTER,
LLC,TRUE HEALTH PHARMACY INC.,WJW MEDICAL
PRODUCTS (DME), YOUSSEF PT. P.C.,CHAD HAMM,
MARIVS HINDS, JUNIOR NICOLAS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 78, 79, 80,
81, 82, 83, 84, 85

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

In this declaratory judgment action, Plaintiff Hereford Insurance Company ("Hereford")
moves for an Order granting renewal of the May 13, 2020 Decision and Order of the Hon.
Kathryn E. Freed ("May 2020 Decision"), pursuant to CPLR 2221(e)(2). Upon renewal

DECISION + ORDER ON
MOTION

Hereford contends that its motion for a default judgment should be granted. There is no opposition to the motion.

Plaintiff seeks declaratory judgment against the following Defendants: ALAN NG, ALLEN ROTHPEARL, MD PC, ANJANI SINHA MEDICAL P.C., ATLAS RADIOLOGY P.C., CLIFTON BURT PAIN PHYSICIAN PC, CVS RX, INC., ELIM ORIENTAL MEDICINE P.C., GOOD TIME ACUPUNCTURE P.C., HEALING TOUCH PHYSICAL THERAPY P.C., HILLSIDE CHIROPRACTIC P.C., INNOVATIVE PAIN MEDICINE, PC, KNIGHT CHIROPRACTIC, P.C., LONG ISLAND NEUROLOGICAL, PC, M & D ELITE PHARMACY, LLC, MAIN STREET RADIOLOGY BAYSIDE, MSJR OF QUEENS, PC, NASSAU QUEENS MEDICAL P.C., PRC SUPPLIES INC, PROGRESSIVE-HUDSON ANESTHESIA, LLC, QUALITY MEDICAL SURGICAL SUPPLIES LLC, RAPAPUNCTURE MEDICAL P.C, SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SINHA ORTHOPEDICS PC, SKY RADIOLOGY P.C., TRUE HEALTH PHARMACY INC., WJW MEDICAL PRODUCTS (DME), YOUSSEF PT. P.C., CHAD HAMM, MARIVS HINDS, and JUNIOR NICOLAS (collectively “Defaulting Defendants”). The motion has been withdrawn with respect to Defendant NYEEQASC, LLC.

In this action, Hereford seeks a declaration that it has no obligation to provide No-Fault coverage for a collision that occurred on April 23, 2019. Hereford claims that Claimants were passengers in a car when it was allegedly involved in a motor vehicle collision on Greenway Boulevard in Hempstead, New York. The facts are set forth in further detail in the May 2020 Decision and are incorporated by reference herein. Hereford sought a default judgment against all Defaulting Defendants and the May 2020 Decision denied the motion finding that Hereford relied on documentation that was inadmissible (NYSCEF Doc. No. 61). The Court specifically

found that Plaintiff's investigator's affidavit was insufficient to satisfy its burden on its founded belief claim because it was based, in principal part, on inadmissible evidence including a police report and an unsigned affidavit of one of the claimants. With respect to the police report, the Court found that it "does not reflect that the officer who prepared it witnessed the alleged collision" and noted that the report was listed for "documentation and insurance purposes only" (NYSCEF Doc. No. 61 at 8). The Court further found that Plaintiff did not establish that the vehicle's occupants were under a duty to report to the officer and that the EUO transcript on which Hereford's investigator relied was not signed or notarized.

It is against this backdrop that Hereford seeks renewal claiming it now has a certified copy of the police report and a signed affidavit from its insured. The affidavit from the insured was signed on August 24, 2020 (NYSCEF Doc. No. 83). The police report is dated April 23, 2019 (NYSCEF Doc. No. 82). Hereford does not explain why it did not include these items in the initial motion. Although it asserts that these new documents are the basis for renewal, the motion primarily focuses on case law that has issued since the decision. The motion appears to be a veiled attempt to reargue the underlying motion before a different judge after receiving an unfavorable decision which it did not appeal.

Hereford bases its application on the portion of CPLR 2221(e)(2) providing that renewal "shall be based upon new facts not offered on the prior motion that would change the prior determination" It further asserts that the Court "failed to address the sufficiency, the content, or the weight to afford or not afford the signed transcript of NICHOLAS" (NYSCEF Doc. No. 79).

The Court finds the submission of the insured's affidavit and certified police report does not warrant renewal because Hereford does not set forth a "reasonable justification for the failure

to present such facts on the prior motion” (CPLR 2221[e][3]). Indeed, it sets forth no reason for the delay in offering these documents. “Renewal is not available as a ‘second chance for parties who have not exercised due diligence in making their first factual presentation” (*Chelsea Piers Mgmt. v Forest Elec. Corp.*, 281 AD2d 252 [1st Dept 2001] quoting *Rubenstein v Goldman*, 225 AD2d 328, 329 [1st Dept 1996]). In any event, a certified copy of the police report would not change the Court’s prior determination because certification does not address the reasons the Court had found the report could not be relied on.

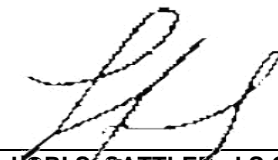
To the extent that Hereford contends the Court failed to address evidence submitted with the motion, this request for relief is more properly raised in a motion to reargue or on appeal. Since the time for those remedies has passed, it is improperly raised in this motion.

For the reasons set forth above, Plaintiff’s motion is denied.

All matters not decided herein are denied.

This constitutes the Decision and Order of the Court.

9/22/2023
DATE


LORI S. SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE