

State Farm Mut. Auto. Ins. Co. v Drougba
2023 NY Slip Op 30267(U)
January 26, 2023
Supreme Court, New York County
Docket Number: Index No. 157860/2022
Judge: Lyle Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 157860/2022

MOTION DATE 12/22/2022

MOTION SEQ. NO. 001

- v -

JOCELIN DROUGBA, JASMINE PARKER, JAHKARA CAMPBELL, CHRISTOPHER GOMEZ, ALAN BECKLES, M.D., ALAN BECKLES, M.D., P.C., CHI CHINESE ACUPUNCTURE, P.C., COMPLETE ORTHO SUPPLY INC, COMPREHENSIVE DIAGNOSTICS AND IMAGING PC, DANIEL SHIFTEH, M.D., ECLIPSE MEDICAL IMAGING P.C., EMUNA INC., EZRX CHEMISTS CORP., FAMILY HEALTH NP, P.C., FIRST HAND PHYSICAL THERAPY P.C., HARVEY LEVITAN, M.D., ISA PROMPT DIAGNOSTICS, INC, MAXIME J. COLE, M.D., MEADOWS RX INC, MICHAEL ZWIRBLIA, PSY.D., NEW YORK PHYSICAL THERAPY TOUCH PLLC, NY NEUROLOGICAL CARE PLLC, PITCH MEDICAL P.C., RAMBAM ORTHO SUPPLY, INC., RIGHT CHOICE PHARMACY INC, SHERRIE RAWLINS MEDICAL P.C., WALMED EQUIPMENT LLC, ZWH MEDICAL CARE, P.C.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 73, 74, 75

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff seeks a declaratory judgment that it is not obligated to provide no-fault coverage to Defendants JASMINE PARKER, JAHKARA CAMPBELL and CHRISTOPHER GOMEZ for failure to appear for examinations under oath. Plaintiff now moves, pursuant to CPLR §3215, seeking a default judgment against defendants JAHKARA CAMPBELL, CHRISTOPHER GOMEZ, ALAN BECKLES, M.D., ALAN BECKLES, M.D., P.C., COMPLETE ORTHO SUPPLY INC, COMPREHENSIVE DIAGNOSTICS AND IMAGING PC, DANIEL SHIFTEH, M.D., ECLIPSE MEDICAL IMAGING P.C., EMUNA, INC. d/b/a NAVAR PHARMACY,

EZRXCHEMISTS CORP., FAMILY HEALTH NP, P.C., FIRST HAND PHYSICAL THERAPY P.C., HARVEY LEVITAN, M.D., ISA PROMPT DIAGNOSTICS, INC, MAXIME J. COLE, M.D. a/k/a MAXIME J. COLES, M.D., MEADOWS RX INC, MICHAEL ZWIRBLIA, PSY.D., NY NEUROLOGICAL CARE PLLC, PITCH MEDICAL P.C., RAMBAM ORTHO SUPPLY, INC., RIGHT CHOICE PHARMACY INC, SHERRIE RAWLINS MEDICAL P.C., WALMED EQUIPMENT LLC, and ZWH MEDICAL CARE for failure to answer and/or appear in this action. In support of the motion, plaintiff provides proof service of the summons and verified complaint, proof of additional mailing, and affidavit of merit. There is no opposition filed as to this motion, except by Defendants EZRX CHEMISTS CORP., and EMUNA, INC. d/b/a NAVAR PHARMACY, against whom this motion has been withdrawn.

An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. *Zelnick v Biderman Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422 [2d Dept 1996]. This has been provided with this motion.

Plaintiff has demonstrated that the summons and verified complaint was duly served upon defendants. To date, except for Defendants EZRX CHEMISTS CORP., and EMUNA, INC. d/b/a NAVAR PHARMACY who has filed an answer, the defendants have failed to answer, appear or obtain an order from the court extending the time to do so. Additionally, the time to answer or otherwise appear has expired. Accordingly, it is hereby

ORDERED that default judgment is granted against defendants JAHKARA CAMPBELL, CHRISTOPHER GOMEZ, ALAN BECKLES, M.D., ALAN BECKLES, M.D., P.C., COMPLETE ORTHO SUPPLY INC, COMPREHENSIVE DIAGNOSTICS AND IMAGING

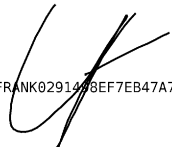
PC, DANIEL SHIFTEH, M.D., ECLIPSE MEDICAL IMAGING P.C., FAMILY HEALTH NP, P.C., FIRST HAND PHYSICAL THERAPY P.C., HARVEY LEVITAN, M.D., ISA PROMPT DIAGNOSTICS, INC, MAXIME J. COLE, M.D. a/k/a MAXIME J. COLES, M.D., MEADOWS RX INC, MICHAEL ZWIRBLIA, PSY.D., NY NEUROLOGICAL CARE PLLC, PITCH MEDICAL P.C., RAMBAM ORTHO SUPPLY, INC., RIGHT CHOICE PHARMACY INC, SHERRIE RAWLINS MEDICAL P.C., WALMED EQUIPMENT LLC, and ZWH MEDICAL CARE; and it is further

ORDERED that That STATE FARM MUTUAL is not obligated to provide any coverage, reimbursements, or pay any monies, sums or funds to any of the defaulting Defendants herein for any and all no-fault related services for which claims and/or bills have been, or may in the future be, submitted by the defaulting Defendants to the Plaintiff on behalf of JASMINE PARKER, JAHKARA CAMPBELL and CHRISTOPHER GOMEZ or for any no-fault related services, personal injury and/or uninsured/underinsured claims or benefits submitted directly by JAHKARA CAMPBELL and CHRISTOPHER GOMEZ; and it is further

ORDERED that defaulting Defendants lack standing to seek or recover no-fault benefits and/or claims submitted on behalf of JASMINE PARKER, JAHKARA CAMPBELL and CHRISTOPHER GOMEZ or for any no-fault related services, personal injury and/or uninsured/underinsured claims or benefits submitted directly by JAHKARA CAMPBELL and CHRISTOPHER GOMEZ as they breached a condition precedent to coverage by failing to appear for examinations under oath in connection with the claim that gave rise to the above-captioned lawsuit.

ADJUDGED that this judgment shall have no effect as to appearing Defendant, CHI CHINESE ACUPUNCTURE, P.C., or as to Defendant, NEW YORK PHYSICAL THERAPY

TOUCH PLLC, against which this lawsuit has been discontinued or as against JOCELIN DROUGBA and JASMINE PARKER, upon which plaintiff did not affect service of the summons and complaint.


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1/26/2023
DATE

LYLE FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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