

Progressive Specialty Ins. Co. v Albert

2012 NY Slip Op 31326(U)

May 7, 2012

Supreme Court, Nassau County

Docket Number: 008542/11

Judge: Joel K. Asarch

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: I.A. PART 13

-----X
PROGRESSIVE SPECIALTY INSURANCE CO.,

Plaintiff,

- against -

DECISION AND ORDER

Index No: 008542/11

**REGINALD ALBERT, LEON JOYETTE, CECILIA
JOYETTE, FOREST DRUGS, MMC EMERGENCY
PHYSICIAN, MMC RADIOLOGY FPP, ADVANCED
MEDICAL CARE PC
("Individual Defendants"),**

Motion Sequence No: 002
Original Return Date: 02/07/12

**ATLANTIC RADIOLOGY IMAGING, P.C., AVANGUARD
MEDICAL GROUP PLLC, DOCTOR GOLDSHTEYN
CHIROPRACTIC, P.C., EAST MIDWOOD VOLUNTEER
AMBULANCE CORPS, INCORPORATED, MAIMONIDES
MEDICAL CENTER, METROPOLITAN MEDICAL &
SURGICAL P.C., MIND AND BODY ACUPUNCTURE, P.C.
MODERN PSYCHIATRIC SERVICES, P.C., NEW QUALITY
MEDICAL, P.C., NEW WAY MEDICAL SUPPLY, CORP.,
ONE TO ONE REHAB P.T., P.C., PROFESSIONAL HEALTH
IMAGING, P.C., and SOS MEDICAL SUPPLY, INC.
("Provider Defendants"),**

collectively, the Defendants.

-----X

P R E S E N T :

**HON. JOEL K. ASARCH,
Justice of the Supreme Court**

The following named papers numbered 1 to 3 were submitted on this Notice of Motion on March 8, 2012:

Papers numbered

Notice of Motion, Affirmation and Affidavit:	1-3
Affidavit in Opposition	X

This unopposed motion by the Plaintiff, PROGRESSIVE SPECIALTY INSURANCE CO., for an Order pursuant to CPLR 3215, granting a default judgment against the Defendants REGINALD ALBERT, FOREST DRUGS, ADVANCED MEDICAL CARE PC, ATLANTIC RADIOLOGY IMAGING, P.C., AVANGUARD MEDICAL GROUP PLLC, EAST MIDWOOD VOLUNTEER AMBULANCE CORPS, INCORPORATED, MAIMONIDES MEDICAL CENTER, METROPOLITAN MEDICAL & SURGICAL P.C., MODERN PSYCHIATRIC SERVICES, P.C., PROFESSIONAL HEALTH IMAGING, P.C., and SOS MEDICAL SUPPLY, INC., and setting the matter down for a hearing on the issue of damages, is decided as follows:

On June 9, 2011, the Plaintiff commenced this action by filing a Summons and Verified Complaint with the Nassau County Clerk's office. The Plaintiff is seeking a declaratory judgment, declaring that the Plaintiff-insurer is not obligated to provide insurance coverage as a result on an incident allegedly occurring on August 4, 2010. The Complaint alleges that the Plaintiff's insured, REGINALD ALBERT, staged a motor vehicle "accident" some 22 days after the policy of insurance went into effect. The Complaint further alleges that the defendant REGINALD ALBERT and a passenger in the vehicle were arrested for and charged with insurance fraud as a result of this "accident" and that the Plaintiff had paid No-Fault benefits to medical provider assignees of Defendant ALBERT and the passenger(s). Despite requests from the Plaintiff, neither the Defendant driver (ALBERT) nor the two passengers attended Examinations Under Oath, although required to do so under the insurance policy as a condition for receiving No-Fault benefits. As part of its *ad damnum* clause, the Plaintiff seeks reimbursement from the Provider Defendants for such sums previously paid by the Plaintiff in connection with the August 4, 2010 incident.

Defendants LEON and CECILIA JOYETTE have answered the complaint (alleging that

Defendant ALBERT was the “mastermind” for the staged accident). The Plaintiff has discontinued the action against Defendants MMC EMERGENCY PHYSICIAN and MMC RADIOLOGY FPP. Further, since the making of this motion, Stipulations of Discontinuance have been filed with respect to claims against PROFESSIONAL HEALTHIMAGING, P.C., FOREST DRUGS, AVANGUARD MEDICAL GROUP PLLC and METROPOLITAN MEDICAL & SURGICAL P.C. Finally, other Defendants have appeared in this action and are not the subject of this default motion (however, no Defendant contested the allegations submitted on this unopposed motion).

“On a motion for leave to enter judgment against a defendant for the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defendant's default” (*Triangle Props. # 2, LLC v Narang*, 73 AD3d 1030, 1032 [2nd Dept. 2010]; *see also, Atlantic Cas. Ins. Co. v. RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]; *Integon Nat. Ins. Co. v. Norterville*, 88 AD3d 654, 655 [2nd Dept. 2011]). As shown in Exhibit “D” to the moving papers, service was made upon the following Defendants against which a default judgment is now sought by serving the Secretary of State pursuant to Business Corporation Law §306 or Limited Liability Company Law §303 on July 7, 2011: ATLANTIC RADIOLOGY IMAGING, P.C., EAST MIDWOOD VOLUNTEER AMBULANCE CORPS, INCORPORATED, MAIMONIDES MEDICAL CENTER, MODERN PSYCHIATRIC SERVICES, P.C., and SOS MEDICAL SUPPLY, INC. Service was made upon Defendant ADVANCED MEDICAL CARE P.C. by leaving copies of the process with an agent authorized to accept process at the premises.

A prior motion for a default judgment had been denied without prejudice by this Court by Decision and Order dated January 4, 2012 based upon a lack of proof concerning proper service upon

defendant REGINALD ALBERT [see Exhibit "K" to moving papers]. It now appears that service was made pursuant to CPLR 308(2) and 313 by delivering a copy of the process to a person of suitable age and discretion (defendant's mother) at the defendant's Pennsylvania place of abode on June 30, 2011 and a copy mailed to him at such address on July 8, 2011. Proof of service was filed with the Nassau County Clerk's Office on July 18, 2011. The hereinabove named Defendants have been duly and timely served with the Summons and Verified Complaint in the instant action and have failed to appear, answer, seek any extension of time to do so or otherwise move this Court for any relief herein.

The medical provider Defendants, ADVANCED MEDICAL CARE PC, ATLANTIC RADIOLOGY IMAGING, P.C., EAST MIDWOOD VOLUNTEER AMBULANCE CORPS, INCORPORATED, MAIMONIDES MEDICAL CENTER, MODERN PSYCHIATRIC SERVICES, P.C., and SOS MEDICAL SUPPLY, INC. claim to have rendered services to, and seek no-fault reimbursement for said services to Defendants REGINALD ALBERT, LEON JOYETTE and CECILIA JOYETTE arising out of the hereinabove described August 4, 2010 incident.

In support of its motion for a default judgment, the Plaintiff has established through affidavits of service that it properly served the Summons and Verified Complaint on the Defendants against whom it now seeks a default judgment, additional notice has been given pursuant to CPLR 3215(f), 3215(g)(4)(i) and 3215(g)(4)(ii), and that none of those parties have appeared or otherwise sought relief in connection with this action. It has also established the merits of its claims. More specifically, it has established that as a result of the actions of the individual Defendants in creating the August 4, 2010 incident and in failing to cooperate with the Plaintiff in its investigation of the claim(s), coverage under the policy of insurance issued to REGINALD ALBERT does not exist.

Accordingly, the Plaintiff's motion for a **default judgment** against Defendants REGINALD ALBERT, ADVANCED MEDICAL CARE PC, ATLANTIC RADIOLOGY IMAGING, P.C., EAST MIDWOOD VOLUNTEER AMBULANCE CORPS, INCORPORATED, MAIMONIDES MEDICAL CENTER, MODERN PSYCHIATRIC SERVICES, P.C., and SOS MEDICAL SUPPLY, INC. is **granted**. The insurance policy issued to Defendant REGINALD ALBERT is null and void with respect to the aforementioned incident of August 4, 2010, as a result of which the Plaintiff has no duty to defend any of the defaulting Defendants under the aforementioned policy of insurance in any action or proceeding brought to recover damages as a result of the incident of August 4, 2010 or to provide coverage for any claims for no-fault or uninsured motorist coverage made by any of the defaulting Defendants under the aforementioned policy in connection with the incident occurring on August 4, 2010. In addition, the Plaintiff is entitled to reimbursement of any claims paid to or on behalf of any of the defaulting Defendants.

Thus, after due deliberation, it is, on motion of McCORMACK AND MATTEI, P.C., attorneys for the Plaintiff,

ORDERED, that the Plaintiff's motion for a default judgment against the aforementioned Defendants for the relief prayed for in the Verified Complaint is **granted as hereinabove stated**; and it is further

ORDERED, that the above captioned action is herewith referred to the Calendar Control Part (CCP) of this Court for an inquest to determine the Plaintiff's claim(s) for reimbursement, compensatory damages, costs and disbursements of this action; and it is further.

ORDERED, that subject to the approval of the Justice there presiding, and provided that a Note of Issue, together with a copy of this order, has been filed at least ten (10) days prior thereto,

this matter shall appear on the Calendar of CCP for 9:30 a.m. on June 25, 2012. Failure of the Plaintiff to appear on such date or any adjourned date thereof shall result in the claim for damages and reimbursements against the above described Defendants being deemed abandoned; and it is further

ORDERED, that the directive with respect to an inquest is subject to the Justice presiding in CCP to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney/Referee as he or she seems appropriate; and it is further

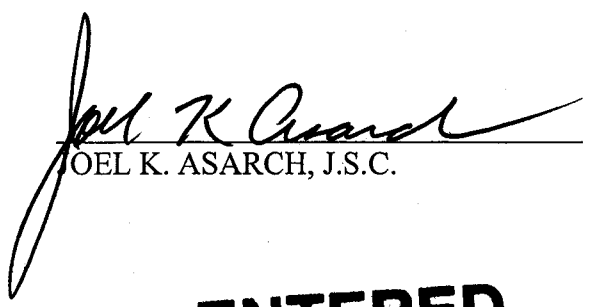
ORDERED, that the Plaintiff's attorneys shall serve a copy of this Decision and Order either personally or by first class mail on or before May 21, 2012 upon all Defendants against whom a default judgment was granted or who have appeared herein; and it is further

ORDERED, that within SIXTY (60) DAYS of the determination of damages, the Plaintiff shall settle a Judgment herein pursuant to CPLR 3001.

The foregoing constitutes the Decision and Order of the Court.

Dated: Mineola, New York
May 7, 2012

ENTER:


JOEL K. ASARCH, J.S.C.

Copy mailed to:

McCormack & Mattei, P.C.
Attorneys for Plaintiff

ENTERED
MAY 08 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE