

National Liability & Fire Ins. Co. v Rue

2014 NY Slip Op 32786(U)

October 31, 2014

Sup Ct, New York County

Docket Number: 150303/2014

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

NATIONAL LIABILITY & FIRE INSURANCE
COMPANY,

Plaintiff,

Index No.: 150303/2014

Motion Date: 10/28/2014

- v -

Motion Seq. No.: 001

Motion Cal. No.: _____

LOURENE RUE, SUPERIOR MEDICAL REHAB P.C.,
DR. ROSSI, MD PC, QUEENS IMAGING CENTER
ADVANCE ORTHOPEDICS, P.C., AAAMG LEASING
CORP. NYH MED CENTER OF QUEENS RADIOLOGY
ASSOCIATES OF MAIN STREET, P.C., NYHMCQ
EMERGENCY PRACTICE NORTH AMERICAN PARTNERS
IN ANESTHESIA, L.L.P., SASAN FAMILY
CHIROPRACTIC, P.C., FRANKLIN HOSPITAL
MEDICAL CENTER, MILLENNIUM LABORATORIES,
INC.,

INTERIM ORDER

Defendants.

The following papers, numbered 1 to 3 were read on this motion for a declaratory judgment on default and for a summary judgment declaration.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiff NATIONAL LIABILITY & FIRE INSURANCE COMPANY in this declaratory judgment action moves for a default judgment for the relief demanded in the Complaint pursuant to CPLR 3215 based upon the failure of defendants SUPERIOR MEDICAL REHAB P.C., DR. ROSSI, MD PC, QUEENS IMAGING CENTER, ADVANCED ORTHOPEDICS, P.C., AAAMG LEASING CORP., NYH MED CENTER OF QUEENS, RADIOLOGY

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

ASSOCIATES OF MAIN STREET, P.C., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYHMCQ EMERGENCY PRACTICE, SASAN FAMILY CHIROPRACTIC, P.C., and FRANKLIN HOSPITAL MEDICAL CENTER to appear or answer with respect to this declaratory judgment action related to defendant LOURENE RUE, an individual who assigned to such medical/health care providers his/her rights to be reimbursed for benefits under the No-Fault laws for the expenses of treatment for injuries suffered in an automobile accident on June 4, 2012,

Plaintiff also moves for summary judgment pursuant to CPLR § 3212(b) against defendant LOURENE RUE for her failure to attend properly scheduled Independent Medical Examinations (IMEs).

Plaintiff has discontinued the action as to defendants NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., and MILLENNIUM LABORATORIES, INC.

Plaintiff has submitted proof of service of the summons and complaint and proof of service of this motion upon defendants SUPERIOR MEDICAL REHAB P.C., DR. ROSSI, MD PC, QUEENS IMAGING CENTER, ADVANCED ORTHOPEDICS, P.C., AAAMG LEASING CORP., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYH MED CENTER OF QUEENS, NYHMCQ EMERGENCY PRACTICE, SASAN FAMILY CHIROPRACTIC, P.C., and FRANKLIN HOSPITAL MEDICAL CENTER by attorney affirmation. Plaintiff has also submitted proof of the

additional mailings of the summons required by CPLR 3215(g)(4). This motion is brought within one year of the default.

The court shall therefore grant a declaratory judgment on default against defendants SUPERIOR MEDICAL REHAB P.C., DR. ROSSI, MD PC, QUEENS IMAGING CENTER, ADVANCED ORTHOPEDICS, P.C., AAAMG LEASING CORP., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYH MED CENTER OF QUEENS, NYHMCQ EMERGENCY PRACTICE, SASAN FAMILY CHIROPRACTIC, P.C., and FRANKLIN HOSPITAL MEDICAL CENTER.

The court shall deny a declaratory judgment based upon summary judgment against defendant LOURENE RUE pursuant to CPLR 3212(b), as such defendant raises issues of fact with respect to whether plaintiff duly notified her of IMES duly scheduled on February 2 and 27, 2013. By her affidavit, sworn to on April 25, 2014, submitted in opposition to plaintiff's motion, defendant states that she attended IMES for No Fault law acupuncture, chiropractic, and orthopedic surgery benefits that were duly noticed and duly scheduled, but that contrary to the evidence of plaintiff of notices they affirm were sent to her, she received no notification for any additional IMES for physiatrist benefits. Pursuant to CPLR 3212 c), there shall be a hearing with respect to whether plaintiff ever duly notified defendant LOURENE RUE of the additional duly scheduled IMES.

Accordingly, it is

ORDERED that the action as against defendants NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., and MILLENNIUM LABORATORIES, INC. is discontinued on consent in accordance with the notice filed by plaintiff; and it is further

ORDERED and ADJUDGED that plaintiff's motion for a default judgment against non-appearing defendants SUPERIOR MEDICAL REHAB P.C., DR. ROSSI, MD PC, QUEENS IMAGING CENTER, ADVANCED ORTHOPEDICS, P.C., AAAMG LEASING CORP., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYHMCQ EMERGENCY PRACTICE, SASAN FAMILY CHIROPRACTIC, P.C., and FRANKLIN HOSPITAL CENTER is GRANTED on default; and it is further

ORDERED, ADJUDGED and DECLARED that under Claim No. 9MNLY060.13 for the alleged accident of June 4, 2012 involving defendant assignor LOURENE RUE, plaintiff NATIONAL LIABILITY & FIRE INSURANCE COMPANY has no duty to honor or pay claims for reimbursement for benefits under the No-Fault laws for the expenses of treatment of assignor LOURENE RUE rendered by non-appearing defendants/ assignees SUPERIOR MEDICAL REHAB P.C., DR. ROSSI, MD PC, QUEENS IMAGING CENTER, ADVANCED ORTHOPEDICS, P.C., AAAMG LEASING CORP., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYH MED CENTER OF QUEENS, RADIOLOGY ASSOCIATES OF MAIN STREET, P.C., NYHMCQ EMERGENCY

PRACTICE, SASAN FAMILY CHIROPRACTIC, P.C., and FRANKLIN HOSPITAL MEDICAL CENTER and, it is further

ORDERED that plaintiff's motion for a summary judgment declaration that defendant LOURENE RUE is not an eligible injured person entitled to no-fault benefits under Claim No.: 764962-05 is held in abeyance pending a hearing on the issue whether plaintiff duly notified defendant LOURENE RUE on January 22, 2013 and February 5, 2013 of physiatrist IMES duly scheduled for February 2 and February 27, 2013, which issue is referred to a Special Referee to hear and report pursuant to CPLR 4320 and that within 30 days from the date of service of this order with notice entry, plaintiff NATIONAL LIABILITY & FIRE INSURANCE COMPANY shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) to arrange a date for a reference to hear and report pursuant to CPLR 4320 and for placement at the earliest convenient date upon the calendar of the Special Referees Part; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts, and further proceedings with respect to plaintiff NATIONAL LIABILITY & FIRE INSURANCE COMPANY'S motion

pursuant to CPLR 3212 shall be heard with respect to such motion for an order resolving the motion to confirm or disaffirm.

This is the interim decision and order of the court.

Dated: October 31, 2014

ENTER:

~~W. A. James~~
DEBRA A. JAMES J.S.C.