

State Farm Mut. Ins. Co. v Anikeyeva

2014 NY Slip Op 33589(U)

August 18, 2014

Supreme Court, Nassau County

Docket Number: 4399/10

Judge: Steven M. Jaeger

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

----- TRIAL/IAS, PART 39
STATE FARM MUTUAL INSURANCE COMPANY, NASSAU COUNTY

INDEX NO.: 4399/10

Plaintiff,

MOTION SUBMISSION
DATE: 6-24-14

-against-

MOTION SEQUENCE
NO. 10

VALENTINA ANIKEYEVA, ANDREY
ANIKEYEV a/k/a ANDRE ANIKEYEV a/k/a
ANDREI ANIKEYEV, AVA ACUPUNCTURE,
P.C., CROSSBAY ACUPUNCTURE, P.C.,
DITMAS ACUPUNCTURE, P.C.,
DOWNTOWN ACUPUNCTURE, P.C.,
EAST ACUPUNCTURE, P.C., EMPIRE
ACUPUNCTURE P.C., FIRST HELP
ACUPUNCTURE, P.C., GREAT WALL
ACUPUNCTURE, P.C., LEXINGTON
ACUPUNCTURE, P.C., MADISON
ACUPUNCTURE, P.C., MIDBOROUGH
ACUPUNCTURE, P.C., NEW ERA
ACUPUNCTURE, P.C., N.Y. FIRST
ACUPUNCTURE, P.C., NORTH
ACUPUNCTURE, P.C. and V.A. ACUTHERAPY
ACUPUNCTURE, P.C.,

Defendants.

The following papers read on this motion:

Notice of Motion, Affirmation, Affidavit, and Exhibits	X
Reply Affirmation and Exhibits	X
Affirmation of Emergency and Notice and Exhibits	X

Plaintiff seeks a preliminary injunction and temporary restraining order, pursuant to CPLR §§6301 and 6313 enjoining Defendant, Midborough Acupuncture, P.C. from executing on a default judgment obtained in the matter of Midborough Acupuncture, P.C. a/a/o Joseph v. State Farm, Index No. 96324-05, Civil Court, Kings County. Defendants argue that the Midborough decision was not covered by this Court's Order.

Plaintiff commenced this action for a judgment declaring, inter alia, that the professional acupuncture corporations named as Defendants in the instant case are not entitled to collect no-fault payments because the Defendants are not owned and controlled by licensed acupuncturists as required by New York State law. The Defendants engaged in a fraudulent scheme whereby Defendant Valentina Aniskeyeva, who is a licensed acupuncturist, formed the PC Defendants for Defendant Andrey Aniskeyev, who is not a licensed acupuncturist. Defendant "Andrey" owned, operated, and controlled the PC Defendants created by Defendant Valentina Aniskeyeva. Plaintiff alleges that Valentina served as a "front" for the PC Defendants and Defendant "Andrey" would hire independent contractors to perform the acupuncture services at the Defendant's offices.

On February 15, 2013, Andrey pleaded guilty to conspiracy to commit health care fraud and mail fraud for his role in the scheme. At the time, this action was commenced, the Plaintiff moved to stay all pending no-fault collection suits brought by the Defendants against State Farm and to enjoin the Defendants from commencing any new no-fault collection suits against State Farm. The parties resolved the motion by stipulation, so-

ordered by Justice Ira Warshawsky on April 12, 2010. The so-ordered stipulation holds that all pending no-fault collection actions between the parties are stayed and the commencement of any new such actions are enjoined "[p]ending a final determination of the issues presented in this action."

On May 31, 2013 this Court granted judgment by default pursuant to CPLR §3215, and also declared that the Defendants "are unlawfully incorporated and are not entitled to collect no-fault benefits for any charges which they have submitted to State Farm" and that "State Farm is not obligated to pay the Defendants." Defendants are appealing the May 31, 2013 decision, so there has not been "a final determination of the issues presented in this action" pursuant to the terms of the so-ordered stipulation.

It is well established that the determination to grant a preliminary injunction lies within the sound discretion of the Supreme Court (Murscorp Inc. v. Romaine, 295 AD2d 431, 432, 743 NYS2d 562 [2nd Dept. 2002]). The Supreme Court also possesses the authority to enjoin a party from enforcing or executing a judgment (Reape v. City of New York, 68 AD3d 1086, 890 NYS2d 334 [2nd Dept. 2009]). Injunctive relief is available where it is demonstrated that the requesting party (i) is likely to succeed on the merits; (ii) will suffer irreparable injury in the absence of the injunction; and (iii) the balancing of the equities favors its position (Hightower v. Reid, 5 AD2d 440, 772 NYS2d 575 [2nd Dept. 2004]). "Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence

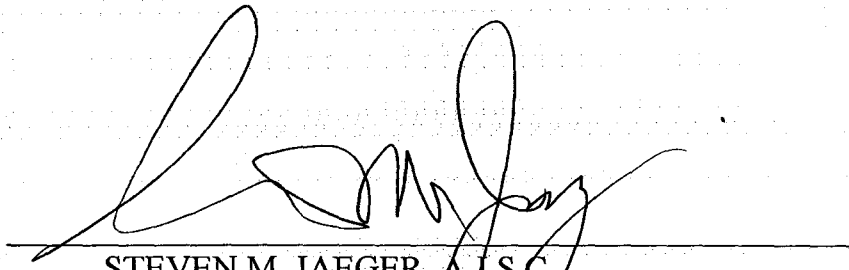
[* 4]
sufficient to raise an issue of fact as to any such elements shall not in itself be grounds for denial of the motion." CPLR 6312(c).

Although Defendants are correct that Plaintiff withdrew its appeal of the default judgment entered against it in the Midborough action, this Court's Order is clear in holding that none of the Defendants, which includes Midborough, are "entitled to collect no-fault benefits for any charges which they have submitted to State Farm." As such, Plaintiff is entitled to injunctive relief, and Defendants are not entitled to execute on the default judgment obtained in the Midborough action.

Accordingly, Plaintiff's motion is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: August 18, 2014



STEVEN M. JAEGER, A.J.S.C.

ENTERED

AUG 20 2014

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