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| <b>All State Ins. Co. v Ammonds</b>  |
| 2014 NY Slip Op 34044(U)   |
| April 24, 2014   |
| Supreme Court, Queens County   |
| Docket Number: 700973/2013   |
| Judge: Robert J. McDonald  |
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[\* 1]

**ORIGINAL**

SHORT FORM ORDER/JUDGMENT

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. ROBERT J. McDONALD  
Justice

IAS PART 34

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ALL STATE INSURANCE COMPANY,  
  
Plaintiff,  
  
- against -

Index No.: 700973/2013  
Motion Date: 2/26/13  
Motion No.: 3  
Motion Seq.: 1

MARK AMMONDS, ADVANCED NEUROLOGICAL CARE, P.C., ADVANCED ORTHOPAEDICS, P.L.L.C., AAAMG LEASING CORP., COMPLETE MEDICAL CARE SERVICES OF N.Y., P.C., FRANKLIN HOSPITAL, INNOVATIVE ORTHOPEDIC AND SPINE ASSOCIATES OF N.Y., P.L.L.C., JEFFREY W. ROSENBERG D.C., P.L.L.C., MILLENNIUM LABORATORIES, INC., NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., PATCHOGUE OPEN MIRE, P.C., D/B/A SOUTHWEST NASSAU RADIOLOGY,

Defendants.

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The following papers numbered 1 to 5 on this motion:

|  | <u>Papers<br/>Numbered</u> |
|--|----------------------------|
| Plaintiff's Notice of Motion-Affirmation-Affidavit(s)-Service-Exhibit(s) | 1-4                        |
| Memorandum of Law  | 5                          |

Plaintiff, by notice of motion, seeks an order of the Court, pursuant to CPLR § 3215, granting a default judgment against all of the above named defendants; and, a declaratory judgment that defendant insured, MARK AMMONDS' misrepresentation of his residence was a material misrepresentation under the terms and conditions of the insurance policy; that material misrepresentations in the procurement and/or renewal of policies of insurance exclude coverage for any claims submitted by

**FILED**

defendant-assignors and defendant assignees; that plaintiff is under no obligation to pay any of the defendants' no fault or third-party claims; that plaintiff is not required to defend and and/or indemnify MARK AMMONDS against any claim made under the third-party liability endorsement and provision of said policy of insurance; and, that plaintiff is not required to provide coverage for any uninsured and/or underinsured motorist claim filed under the underinsured motorist provisions.

No opposition has been filed.

In support of the motion, plaintiff submits a copy of the summons and complaint filed on March 20, 2013; a copy of the Examination Under Oath of Mark Ammonds taken on December 13, 2012; the affirmation of Jennifer McDonald, Esq.; the Affidavit of Merit of Bernadette Farrell, Senior Claim Service Adjuster, Special Investigative Unit, Allstate Insurance Company; a copy of Allstate Insurance Co. policy effective April 12, 2012 through October 12, 2012; photos of the property known as 2520 Vestal Parkway, Vestal, NY; a copy of the police report; copies of completed N.Y.S. no fault assignment forms; copies of the affidavits of service.

On or about October 12, 2003 Allstate Insurance Co. issued defendant Ammonds an insurance policy under Policy Number 903580231 for a 2002 Honda Accord with license plate number CPT 1900. Defendant Ammonds represented to Allstate that he resided at 10 Crocker Avenue, 1 Fl., Johnson City, NY 13790 and that the vehicle was garaged at that address.

On or about June 27, 2004, in connection with the renewal of the policy, defendant notified Allstate that his address had changed from Johnson City, NY to 2520 Vestal Parkway, #101, Vestal, NY 13850 and that the vehicle was garaged at that address.

On or about August 17, 2012, defendant informed Allstate Insurance Co. that he had been involved in an accident on August 3, 2012. Thereafter, defendant submitted a No-Fault application (NF2) in which Allstate established a claim file under claim number 0254901069.

Pursuant to the Affidavit of Merit of Bernadette Farrell, Senior Claim Service Adjuster, Mr. Ammonds testified at an Examination Under Oath, dated December 13, 2012. Additionally, Mr. Ammonds testified that for the past two years he resided at 115-22 203<sup>rd</sup> Street, St. Albans, NY. He further testified that his previous address was a private house located at 2520 Vestal

Parkway, #101, Vestal, NY.

Plaintiff concludes that defendant Ammonds materially misrepresented his address as Vestal NY rather than his St. Albans, NY address where he resided and garaged the insured vehicle in order to procure lower premiums.

Plaintiff maintains that upon investigation it was determined that 2520 Vestal Parkway, Vestal, NY is associated with a street mall or plaza in which four commercial businesses are located, including Hertz, Sprint, Art Nail and a United Parcel Service. Plaintiff submits as Exhibit F, photographs of 2520 Vestal Parkway, as well as a P.O. Box 101 located inside the UPS store. Plaintiff claims that defendant has made a material misrepresentation in the procurement and/or renewal of an insurance policy pursuant to New York State Insurance Law § 3105. Plaintiff further maintains that the material misrepresentation in the procurement and/or renewal of the policy of insurance was to obtain a lower premium, and that a material misrepresentation excludes coverage for any claims submitted by the defaulting defendants.

In this matter the evidence is sufficient to establish prima facie that the insured intentionally misrepresented his address in order to obtain insurance at reduced premiums and that the misrepresentation was material inasmuch as plaintiff would not have issued the policy under the same terms had it known that the insured resided in St. Albans, Queens, NY. Matter of Insurance Co. of N.Am. v. Kaplun, 274 AD2d 293, 299 [2d Dept. 2000]; AA Acupuncture Service v. Safeco Ins. Co. of America, 25 Misc3d 30 (App. Term, 2009).

Accordingly, plaintiff's motion is determined as follows:

The branch of the motion for default judgment against MARK AMMONDS, ADVANCED NEUROLOGICAL CARE, P.C., ADVANCED ORTHOPAEDICS, P.L.L.C., AAAMG LEASING CORP., COMPLETE MEDICAL CARE SERVICES OF N.Y., P.C., FRANKLIN HOSPITAL, INNOVATIVE ORTHOPEDIC AND SPINE ASSOCIATES OF N.Y., P.L.L.C., JEFFREY W. ROSENBERG D.C., P.L.L.C., MILLENNIUM LABORATORIES, INC., NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., PATCHOGUE OPEN MIRE, P.C., D/B/A SOUTHWEST NASSAU RADIOLOGY is granted without opposition; and, it is further

ORDERED and ADJUDGED, that plaintiff is under no obligation to pay any of the defendants' no fault or third-party claims; and, it is further

ORDERED and ADJUDGED, that plaintiff is not required to defend and and/or indemnify MARK AMMONDS against any claim made under the third-party liability endorsement and provision of said policy of insurance; and, it is further

ORDERED and ADJUDGED, that plaintiff is not required to provide coverage for any uninsured and/or underinsured motorist claim filed under the underinsured motorist provisions; and, it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

Dated: Long Island City, NY  
April 24, 2014



ROBERT J. McDONALD  
J.S.C.