

21st Centur Ins. Co. v Peebles
2015 NY Slip Op 31695(U)
August 28, 2015
Supreme Court, New York County
Docket Number: 159681/14
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
21ST CENTURY INSURANCE COMPANY,

Plaintiff,

Index No.
159681/14

- against -

**DECISION
and ORDER**

BRIAN PEBBLES, LARRY HOLLOMAN, RONNIE
HOLLOMAN, LARRY MOORE, LIONEL NICOLAS
JR., JOHN DOE 1-10, JANE DOE 1-10
("Individual Defendants"),

Mot. Seq. 1

-and-

OMAR 18 INC., AAMG LEASING CORP, ADVANCED
RECOVERY EQUIPMENT AND SUPPLIES LLC D/B/A ACCESS
HEALTHCARE SUPPLY INC, BASMALA
MEDICAL P.C., BETH ISRAEL MEDICAL CENTER,
BETTERHEALTH CARE CHIROPRACTIC P.C.,
BROOKLYN KINGS HIGHWAY ANESTHESIOLOGISTS,
LLP, CBLPATH INC, CENTRAL BROADWAY MEDICAL
P.C., DIAGNOSTIC CHIROPRACTIC SPECIALITIES, P.C. D/B/A
DIAGNOSTIC CHIROPRACTIC SPECIALTY, DR.
BRIJ KMITTAL MD, EAST COAST ORTHOTIC &
PROSTHETIC CORP, EXCEL IMAGING P.C.,
FJ ORTHOPEDICS AND PAIN MANAGEMENT PLLC D/B/A FJ
ORTHOPAEDICS PLLC, FOREST HILLS MEDICAL P.C.,
HEALING POWER MEDICAL SUPPLY INC.,
HIGHWAY IMAGING ASSOCIATES LLP,
KINGSBROOK JEWISH MEDICAL CENTER, LEMONTI
MEDICAL P.C., MAGDY ELMADBOLY ACUPUNCTURE
P.C. D/B/A MAGDYM ELMADBOLY, MEDICAL &
SURGICAL ASSOCIATE OF QUEENS & LONG ISLAND
P.C., MOONLIGHT PT P.C., NEW CENTURY MEDICAL
DIAGNOSTIC P.C, O&G ACUPUNCTURE P.C, PARK
AVENUE COMPREHENSIVE MEDICAL PLLC D/B/A

PARK AVE COMPREHENSIVE MEDICINE PLLC,
 PHILDOV ANESTHESIOLOGY GROUP P.C, PRECIOUS
 BODYLLC, PRECISION MEDICAL DIAGNOSTICS OF NY P.C,
 PREMIER SURGICAL SERVICES P.C,
 CENTRAL QUEENS DAY SURGICAL CENTER, INC.
 D/B/A QUEENS SURGI CENTER, RAMACHANDRAN
 NAIR MD, SHARMEEN SULTANA MD PLLC,
 SHASHEK CHIROPRACTIC P.C., SUNY DOWNSTATE MEDICAL
 CENTER D/B/A SUNY DOWNSTATE, UPSCALE
 MEDICAL DIAGNOSTICS P.C., ABC CORP 1-10
 (“Provider Defendants”),

Collectively, the Defendants.

-----X

HON. EILEEN A. RAKOWER

This case arises from an automobile accident on October 26, 2012 where Individual Defendants allegedly received personal injuries and made claims as a purported eligible person under an insurance policy issued by Plaintiff to Brian Peebles (Policy No. 0020603842) and assigned the rights to collect no-fault benefits to co-defendants/Provider Defendants.

Plaintiff brings this action seeking a declaration that it is not obligated to provide coverage for any and all first benefits claimed by defendants as a result of the October 26, 2011 motor vehicle accident concerning the policy of insurance issued to Brian Peebles (Policy No. 0020603842) (“Subject Policy”) on the grounds that the accident was a “staged accident.”

The Complaint alleges:

The insurance policy was fraudulent procured for the sole purpose of defrauding 21st Century Advantage Insurance Company and the public at large. This scheme involved purchasing insurance with the intent of staging accidents. The Policy was secured with an upstate address in order to obtain lower rates, while the vehicle was principally garaged and in Brooklyn. In addition, the vehicle was rented out to people not listed under the policy for \$300 per month. The insured vehicle was then involved in an intentional ‘accident’ in order to submit fraudulent billing to the insurance companies.

The insured then allowed his policy to lapse based on non-payment on November 22, 2011, less than a month after the accident.

Plaintiff now moves this Court for leave to enter a default judgment pursuant to CPLR §3215 against the following defendants ((all defendants with the exception of: The State University of New York, AAMG Leasing Corp., Excel Imaging P.C., Beth Israel Medical Center, and Brooklyn Kings Highway Anesthesiologists, LLP):

OMAR 18 INC., ADVANCED RECOVERY EQUIPMENT AND SUPPLIES LLC D/B/A ACCESS HEALTHCARE SUPPLY INC, BASMALA MEDICAL P.C., BETTERHEALTH CARE CHIROPRACTIC P.C., CBLPATH INC, CENTRAL BROADWAY MEDICAL P.C., DIAGNOSTIC CHIROPRACTIC SPECIALITIES, P.C. D/B/A DIAGNOSTIC CHIROPRACTIC SPECIALTY, DR. BRIJ KMITTAL MD, EAST COAST ORTHOTIC & PROSTHETIC CORP, FJ ORTHOPEDICS AND PAIN MANAGEMENT PLLC D/B/A FJ ORTHOPAEDICS PLLC, FOREST HILLS MEDICAL P.C., HEALING POWER MEDICAL SUPPLY INC, HIGHWAY IMAGING ASSOCIATES LLP, KINGSBROOK JEWISH MEDICAL CENTER, LEMONTI MEDICAL P.C., MAGDY ELMADBOLY ACUPUNCTURE P.C. D/B/A MAGDYM ELMADBOLY, MEDICAL & SURGICAL ASSOCIATE OF QUEENS & LONG ISLAND P.C., MOONLIGHT PT P.C., NEW CENTURY MEDICAL DIAGNOSTIC P.C, O&G ACUPUNCTURE P.C, PARK AVENUE COMPREHENSIVE MEDICAL PLLC D/B/A PARK AVE COMPREHENSIVE MEDICINEP LLC, PHILDOV ANESTHESIOLOGY GROUP P.C, PRECIOUS BODYLLC, PRECISION MEDICAL DIAGNOSTICS OF NY P.C, PREMIER SURGICAL SERVICES P.C, CENTRAL QUEENS DAY SURGICAL CENTER, INC. D/B/A QUEENS SURGI CENTER, RAMACHANDRAN NAIR MD, SHARMEEN SULTANA MD PLLC, SHASHEK CHIROPRACTIC P.C., UPSCALE MEDICAL DIAGNOSTICS P.C.,

Plaintiff is not moving with respect to defendant, The State University of New York; said defendant interposed an answer on December 4, 2014.

The action has been discontinued against the following defendants: AAMG Leasing Corp., Excel Imaging P.C., Beth Israel Medical Center, and Brooklyn Kings Highway Anesthesiologists, LLP.

Plaintiff submits the attorney affirmation of Konstantinos Tsirkas, which annexes affidavits of service attesting to service on the Defaulting Defendants and proof of additional mailing pursuant to CPLR §3215(g)(4) on the corporate defendants served pursuant to BCL 306.

The following Individual Named Defendants pursuant to CPLR 308(2) on the following dates:

Dr. Brij K Mittal, MD – served on February 6, 2015; Brian Peebles - served on November 9, 2014; Larry Moore - served on November 14, 2014; Larry Holloman- served on October 28, 2014; Ronnie Holloman- served on November 3, 2014; and Lionel Nicolas Jr. - served on October 16, 2014.

The following Provider Defendants were served pursuant to Business Corporation Law §306, on October 10, 2014:

Omar 18 Inc., Advanced Recovery Equipment and Supplies LLC D/B/A Access Healthcare Supply Inc., Basmala Medical P.C., CBLPATH Inc., Better Health Care Chiropractic P.C., Central Broadway Medical P.C., Diagnostic Chiropractic Specialties, P.C. D/B/A Diagnostic Chiropractic Specialty, East Coast Orthotic & Prosthetic Corp., FJ Orthopedics and Pain Management PLLC D/B/A FJ Orthopedics PLLC, Forest Hills Medical P.C., Healing Power Medical Supply Inc., Highway Imaging Associates LLP, Kingsbrook Jewish Medical Center, Lemonti Medical P.C., Magdy Elmadboly Acupuncture P.C. D/B/A Magdy Elmadboly. Medical & Surgical Associate of Queens & Long Island P.C., Moon Light PT P.C., New Century Medical Diagnostic P.C., O & G Acupuncture P.C., Park Avenue Comprehensive Medical PLLC D/B/A Park Ave Comprehensive Medicine PLLC, Phildov Anesthesiology Group P.C., Precious Body LLC, Precision Medical Diagnostics of NY P.C., Premier Surgical Services P.C., Central Queens Day Surgical Center, Inc. D/B/A Queens Surgi Center, Sharmeen Sultana M.D. PLLC, Shashek Chiropractic P.C., and Upscale Medical Diagnostics P.C.

Defendant Ramachandran Nair M.D., was served on October 27, 2014

pursuant to CPLR § 311.

CPLR § 3215 provides, in relevant part: “[o]n any application for judgment by default, the applicant shall file proof ... of the facts constituting the claim, the default and the amount due by affidavit made by the party.” (CPLR § 3215[f]). CPLR § 3215 does not contemplate that default judgments are to be “rubberstamped” once jurisdiction and a failure to appear have been shown. (*Feffer v. Malpeso*, 210 A.D.2d 60, 61 [1st Dep’t 1994]; *see also Gagen v. Kipany Prods.*, 289 A.D. 2d 844, 846 [3d Dep’t, 2001] [“[T]he granting of a default judgment does not become a ‘mandatory ministerial duty’ upon a defendant’s default.”]). Rather, some proof of liability is required to satisfy the court as to the prima facie validity of the uncontested cause of action. (*Feffer*, 210 A.D.2d at 61). The standard of proof on an application for judgment by default “is not stringent, amounting only to some firsthand confirmation of the facts”. (*Id.*).

Plaintiff submits the Affidavit of Sandra Keane, an Investigative Analyst, which attests to the investigation of the accident on October 26, 2011. Keane states, “The investigation into this claim has resulted in a founded belief that the subject loss was staged.” Accordingly, Plaintiff meets its burden of demonstrating sufficient first-hand confirmation of the facts to support the entry of a declaratory judgment that it does not have to defend or indemnify, provide coverage, or reimburse Defaulting Defendants for any claim submitting under the Policy for damages arising as a result of October 26, 2011 accident. Plaintiff, however, has not demonstrated sufficient facts to support the additional relief it seeks, which includes “restitution from the Defendants in an amount by which Defendants have been unjustly enriched” or “attorneys’ fees.”

Based upon the foregoing it is hereby,

ORDERED that Plaintiff’s motion for leave to enter a default judgment against Defaulting Defendants (all defendants with the exception of The State University of New York, AAMG Leasing Corp., Excel Imaging P.C., Beth Israel Medical Center, and Brooklyn Kings Highway Anesthesiologists, LLP) is granted without opposition to the following extent; and it is further

ORDERED and ADJUDGED that Plaintiff has no contractual duty to Defaulting Defendants to defend or indemnify said Defaulting Defendants under the subject Policy in any action or proceeding brought for damages arising out of personal injury or property damage as a result of the alleged accident of October 26, 2011; and it is further

ORDERED and ADJUDGED that Plaintiff is not obligated to provide coverage for any claim or honor or pay claims for reimbursement submitted by Defaulting Defendants arising the alleged accident of October 26, 2011 under New York Insurance Regulation 68; and it is further

ORDERED that the matter is severed and shall proceed against defendant, The State University of New York.

This constitutes the Decision and Order of the Court. All other requested relief is denied.

DATED: AUGUST 28, 2015



EILEEN A. RAKOWER, J.S.C.