

Country-Wide Ins. Co. v Mateo
2018 NY Slip Op 31020(U)
May 24, 2018
Supreme Court, New York County
Docket Number: 150174/2017
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X

INDEX NO. 150174/2017

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

MOTION SEQ. NO. 001

- v -

JOSHUA MATEO, ANDRES NUNEZ, SANTA SANTIAGO, JOSE FRANCISCO CRUZ, ANTONY JOAN PERALTA DE LA ROSA, TOOTARAM TOOTARAM, DEODAT SOMWARU,

DECISION ORDER AND JUDGMENT

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is decided as follows.

In this action for, inter alia, a declaratory judgment regarding no-fault coverage, plaintiff Country-Wide Insurance Company moves: 1) pursuant to CPLR 3215, for a default judgment against defendants Joshua Mateo, Andres Nunez, Santa M. Santiago, Jose Francisco Cruz, Antony Joan Peralta De La Rosa, Tootaram Tootaram, and Deodat Somwaru; and 2) for such other and further relief as this Court deems just and proper.

FACTUAL AND PROCEDURAL BACKGROUND:

This action arises from a motor vehicle accident on August 28, 2015. On that date, a vehicle owned by defendant Joshua Mateo and operated by defendant Andres Nunez ("the insured vehicle") was involved in a collision with a vehicle owned by defendant Tootaram Tootaram and operated by defendant Deodat K. Somaru. Defendants Santa M. Santiago, Jose Francisco Cruz,

and Antony Joan Peralta De La Rosa were allegedly passengers in the insured vehicle at the time of the incident.

As of the date of the accident, Mateo's vehicle was insured pursuant to an automobile insurance policy, numbered 01 RT 7096320 15, issued by plaintiff Country-Wide Insurance Company ("CWI"). The policy provided, in relevant part, as follows:

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

- A. [CWI] will pay damages for "bodily injury" . . . for which an "insured" becomes legally responsible because of an auto accident . . .

EXCLUSIONS

- A. [CWI does] not provide Liability Coverage for any Insured:
1. Who intentionally causes "bodily injury" or "property damage".
 5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance . . .

Following the collision, CWI conducted an investigation of the accident which included, inter alia, examinations under oath ("EUOs") of Santiago, De La Rosa and Cruz at which these witnesses gave conflicting testimony. Santiago testified, inter alia, that prior to the accident, she and the other passengers got a ride from Nunez, and that they paid him for the ride. De La Rosa and Cruz testified, inter alia, that Nunez did not charge any of those defendants for the ride.

According to the accident report, the collision occurred when Nunez accelerated the insured vehicle to hit Tootaram's car. Thus, CWI concluded that the accident was intentionally

caused by Nunez and thus not covered under the policy. CWI further determined that the collision occurred during the course of Nunez's employment, which gave rise to an exclusion of coverage under the policy.

In a disclaimer letter dated June 30, 2016, CWI disclaimed any obligation to defend and/or indemnify Mateo and Nunez with respect to any claims arising from the accident. CWI also rescinded any settlement offers relating to the accident and demanded the return of an \$8,000 settlement payment it claims it made to Santiago.

On or about the same date, Santiago, Cruz, and De La Rosa commenced an action against Mateo, Nunez, Tootaram and Somwaru in the Supreme Court, Bronx County under Index Number 302344/16 to recover damages for personal injuries they allegedly sustained in the accident.

On January 6, 2017, CWI commenced the captioned action seeking, as a first cause of action, a declaration that it is not obligated to indemnify and/or defend Mateo and Nunez for any claims arising from the collision. As a second cause of action, it sought rescission of the \$8,000 settlement payment it allegedly made to Santiago. CWI served defendants with process and then mailed a copy of the summons and complaint to each of them. Each of the defendants failed to answer or otherwise appear in this action.

On January 16, 2018, CWI moved, pursuant to CPLR 3215, "for a default judgment against defendants for the relief requested in the summons and complaint" which, as noted above, sought a declaratory judgment against Mateo and Nunez as well as rescission of its settlement with Santiago. Defendants have not opposed the motion.

LEGAL CONCLUSIONS:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

CWI has established its entitlement to a default judgment on the first cause of action in its complaint, seeking a declaration that it is not obligated to defend or indemnify Mateo and/or Nunez for any damages sustained by them or claimed against them for injuries arising from the alleged accident. CWI submitted proof of service of the summons and complaint as well as proof of defendants’ failure to answer the complaint. Further, it set forth the facts constituting the claim, i.e., that the collision was intentionally caused by Nunez and that the accident occurred during the course of Nunez’s employment, by submitting the affidavits of John M. Stevenson, Vice-President of the Claims Department of CWI, and Paul Corr, supervising investigator with the Special Investigation Unit at CWI.

However, CWI’s motion for a default judgment is denied as to its second cause of action seeking rescission of the \$8,000 settlement payment it claims it made to Santiago. CWI’s motion does not contain any proof of a settlement payment to Santiago or what the terms of such settlement agreement were. “In order to justify the intervention of equity to rescind a contract, a party must allege fraud in the inducement of the contract; failure of consideration; an inability to perform the contract after it is made; or a breach in the contract which substantially defeats the purpose thereof.” *Babylon Assoc. v Suffolk County*, 101 AD2d 207, 215 (2d Dept 1984).” *Bd. of Mgrs. of*

the Impala Condominium v Impala Assoc., L.P., 2015 NY Slip Op 30514(U), *12 (Sup Ct, NY County 2015). CWI's rescission claim contains none of the foregoing elements. Although CWI alludes to the fact that its settlement with Santiago was procured by fraud, CWI does not specifically claim fraud and, even if it did, its complaint fails to meet the stringent pleading requirements for a fraud action set forth in CPLR 3016 (b).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Country-Wide Insurance Company for a default judgment against defendants Joshua Mateo, Andres Nunez, Santa M. Santiago, Jose Francisco Cruz, Antony Joan Peralta De La Rosa, Tootaram Tootaram and Deodat K. Somaru pursuant to CPLR 3215 is granted as to its first cause of action seeking a declaratory judgment against said defendants; and it is further

ORDERED and ADJUDGED that plaintiff Country-Wide Insurance Company is not required to defend and/or indemnify defendants Joshua Mateo and Andres Nunez pursuant to Country Wide Insurance Company policy number 01 RT 7096320 15 with respect to any claims arising out of a motor vehicle accident which occurred on August 28, 2015; and it is further,

ORDERED that the motion by plaintiff Country-Wide Insurance Company for a default judgment against defendants pursuant to CPLR 3215 is denied with respect to its second cause of action seeking rescission of its settlement agreement with defendant Santa M. Santiago; and it is further

ORDERED that plaintiff Country-Wide Insurance Company is to serve a copy of this order with notice of entry upon all parties and the County Clerk's Office (Room 141B) and the Clerk of the Trial Support Office (Room 158) within 30 days of the date hereof; and it is further,

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further,

ORDERED that this constitutes the decision, judgment, and order of this Court.

5/24/2018
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: