

Country-Wide Ins. Co. v Davis
2018 NY Slip Op 33256(U)
December 12, 2018
Supreme Court, New York County
Docket Number: 651389/2018
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 45

Justice

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INDEX NO.

651389/2018

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

MOTION DATE

10/16/2018,
10/30/2018

- v -

MOTION SEQ. NO.

001 002

CHRISTOPHER DAVIS, NEW YORK CITY HEALTH AND
HOSPITAL D/B/A KINGS COUNTY HOSPITAL CENTER,
MINGMEN ACUPUNCTURE SERVICES, P.C., HAAR
ORTHOPAEDICS & SPORTS MEDICINE, P.C., MAXIMUM
CHIROPRACTIC P.C., VITAL CHIROPRACTIC, P.C., EXCEL
SURGERY CENTER, L.L.C., METRO PAIN SPECIALISTS
PROFESSIONAL CORPORATION, A.C. MEDICAL,
P.C., KENSINGTON RADIOLOGY GROUP, P.C., 21ST CENTURY
PHARMACY INC

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion for

SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion for

DEFAULT JUDGMENT

Upon the foregoing documents:

Plaintiff Country-Wide Insurance Company seeks a default judgment in its declaratory judgment action against Defendants Christopher Davis, New York City Health and Hospital d/b/a Kings County Hospital Center, Mingmen Acupuncture Services P.C., Haar Orthopaedics & Sports Medicine P.C., Excel Surgery Center LLC, Metro Pain Specialists Professional Corporation, Kensington Radiology Group P.C., and 21st Century Pharmacy ("Non-Answering Defendants"), and summary judgment in the same declaratory judgment action against Defendants Maximum Chiropractic P.C., Vital Chiropractic P.C., and A.C. Medical P.C. ("Answering Defendants").

Plaintiff filed its summons and complaint with the Court on March 22, 2018, and served all Defendants by April 7, 2018. (NYSCEF 2-12). The Answering Defendants filed an answer to the complaint on May 5, 2018. (NYSCEF 14). Plaintiff filed for summary judgment against the Answering Defendants on October 1, 2018. (NYSCEF 16). The Non-Answering Defendants have failed to appear, answer or otherwise move in this action. Plaintiff filed an unopposed motion for default judgment against the Non-Answering Defendants on October 11, 2018. (NYSCEF 40).

a. Summary Judgment

CPLR § 3212 provides in relevant part that a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party... [T]he motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.”

Answering Defendants raise a genuine issue of material fact with regard to the timeliness of Plaintiff’s claim denials. Under 11 NYCRR 65-3.8(c) the insurer must either pay or deny the claim within 30 calendar days after proof of claim is received. Plaintiff submitted NF-10 Denial of Claim forms for each Answering Defendant. (NYSCEF 33). However, the forms indicate that they were sent outside of the 30 calendar day window in which Plaintiff was required to issue the denials. Plaintiff has not submitted evidence to show that the denials were sent within the mandated time frame. As such, the Answering Defendants have raised a genuine issue of material fact sufficient to deny summary judgment.

b. Default Judgment

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Plaintiff is entitled to a default judgment and the declaratory relief sought in the Complaint against the Defaulting Defendant. *See Hertz Vehicles, LLC v. Best Touch PT, P.C.*, 162 A.D.3d 617 (1st Dep't 2018) (properly awarding declaratory judgment by default upon Plaintiff's showing proof of facts constituting the claims and Defendant's failure to appear in the action or oppose the motion).

Defendant Davis and the Non-Answering Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR §5015 or CPLR §317, or any other applicable law.

Therefore it is:

ORDERED that Plaintiff's motion for Summary Judgment against Defendants Maximum Chiropractic P.C., Vital Chiropractic P.C., and A.C. Medical P.C., is Denied;

ORDERED Plaintiff's Motion for a Default Judgment against Defendants Christopher Davis, New York City Health and Hospital d/b/a/ Kings County Hospital Center, Mingmen Acupuncture Services P.C., Haar Orthopaedics & Sports Medicine P.C., Excel Surgery Center L.L.C., Metro Pain Specialists Professional Corporation, Kensington Radiology Group P.C., and 21st Century Pharmacy Inc., is Granted; and it is further;

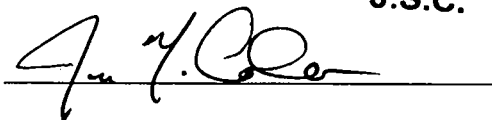
ORDERED that, consistent with the foregoing, it is adjudged and declared that Plaintiff Country-Wide Insurance Company owes no duty to pay No-Fault claims to Defendant Christopher Davis or to Defendants New York City Health and Hospital d/b/a/ Kings County Hospital Center, Mingmen Acupuncture Services P.C., Haar Orthopaedics & Sports Medicine P.C., Excel Surgery Center L.L.C., Metro Pain Specialists Professional Corporation, Kensington

Radiology Group P.C., and 21st Century Pharmacy Inc., as a result of a motor vehicle accident that occurred on July 18, 2015; and it is further

ORDERED that, upon presentation of a copy of this Decision and Order with notice of entry, accompanied by a proper form of judgement, the Clerk is hereby directed to permit entry of judgment in favor of Plaintiff Country-Wide Insurance Company and against Defendants Christopher Davis, New York City Health and Hospital d/b/a/ Kings County Hospital Center, Mingmen Acupuncture Services P.C., Haar Orthopaedics & Sports Medicine P.C., Excel Surgery Center L.L.C., Metro Pain Specialists Professional Corporation, Kensington Radiology Group P.C., and 21st Century Pharmacy Inc.

This constitutes the Decision and Order of the Court.

HON. JOEL M. COHEN
J.S.C.



12/12/2018

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE