

Liberty Mut. Ins. Co. v De Los Santos

2019 NY Slip Op 30068(U)

January 3, 2019

Supreme Court, New York County

Docket Number: 656210/2017

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE
HON. MELISSA A. CRANE
J.S.C.

PART 15

LIBERTY MUTUAL INSURANCE COMPANY and
LM INSURANCE CORPORATION

INDEX NO. 656210/2017
MOTION DATE
MOTION SEQ. NO. 001
MOTION CAL. NO.

- v -

YUDERKI DE LOS SANTOS and OSMIN DE LA CRUZ
and

ARDEN M KAISMAN, MD, P.C., GC CHIROPRACTIC, P.C., GOLDEN ACUPUNCTURE,
P.C, GRAHAM WELLNESS MEDICAL, P.C., HOWARD BEACH REHAB P.T., P.C.,
LIDA'S MEDICAL SUPPLY, INC., NG ACUPUNCTURE CARE, P.C., PROSPER
ACUPUNCTURE, P.C., SIGMA MED CARE, INC., STAND UP MRI OF BESONHURST, and
JIANG ACUPUNCTURE, P.C.

The following papers, numbered _ to _ were read on this motion to/for

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/Order to Show Cause, Answering Affidavits, and Replying Affidavits.

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is

This case arises from an automobile accident that allegedly occurred on April 21, 2016, involving individual defendants Yuderki De Los Santos and Osmin De La Cruz ("Santos" and "Cruz"). Santos and Cruz allege that they sustained serious bodily injuries as a result of the collision, and submitted claims to plaintiff, Liberty Mutual Insurance Company ("Liberty Mutual") for no-fault benefits. Santos and Cruz assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiff commenced an action on or about October 2, 2017, by a Summons and Complaint, seeking a declaratory judgment against claimant as well as numerous co-defendants/medical providers under Policy Number A05-221-060883-70.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING
REASON(S):

Plaintiff has discontinued this action against defendant Jiang Acupuncture, P.C. (NYSCEF doc no 2), and against Golden Acupuncture Care, P.c., and NG Acupuncture, P.C., (NYSCEF doc no 4).

Plaintiff Liberty Mutual now moves for a default judgment pursuant to CPLR 3215 against the following non-answering defendants: Yuderki De Los Santos, Osmin De La Cruz, Arden M Kaisman, MD, PC, GC Chiropractic, P.C., Graham Wellness Medical, P.C., Howard Beach Rehab, PT, PC, Lida's Medical Supply, Inc., Prosper Acupuncture, P.C., Sigma Med Care Inc., and Stand Up MRI Bensonhurst (the "non-answering defendants"), for their failure to answer the summons and complaint. The court grants plaintiffs' motion against the non-answering defendants. Plaintiffs have submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of defendant's failure to answer or appear (*see* CPLR 3215; *see also, Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]).

Plaintiff argues that, based on Examination Under Oath testimony from Santos and Cruz, in addition to Liberty Mutual's own special unit investigation into the circumstances surrounding the accident, defendants Santos and Cruz made material misrepresentations in the procurement of the policy (held by a third-party individual, Diaz). First, the police found Cruz in the driver's seat at the time of the accident. He did not have a valid license. The policyholder, Diaz, was allegedly out running errands, but during the entire time the police were there, Diaz never returned to the car. Second, plaintiff discovered evidence of rate evasion. The policyholder listed the policy address as Oneida, New York, but it appears that the vehicle was garaged in Brooklyn, New York (*see* affidavit from Anthony Augugliaro, II, an investigator for Liberty Mutual's special investigations unit, who investigated no-fault claims in this case that indicated

material misrepresentation). Finally, plaintiff denied coverage based on Cruz's failure to appear for multiple scheduled Independent Medical Examinations (IMEs).

The non-answering defendants have not answered or otherwise appeared in this action. Nor did they oppose this motion or appear for oral argument on October 4, 2018.

Accordingly, it is

ORDERED that plaintiff Liberty Mutual's motion for default judgment against defendants Yuderki De Los Santos, Osmin De La Cruz, Arden M Kaisman, MD, PC, GC Chiropractic, P.C., Graham Wellness Medical, P.C., Howard Beach Rehab, PT, PC, Lida's Medical Supply, Inc., Prosper Acupuncture, P.C., Sigma Med Care Inc., and Stand Up MRI Bensonhurst, is granted without opposition; and it is further

ADJUDGED AND DECLARED that defendants Yuderki De Los Santos and Osmin De La Cruz are not eligible injured persons entitled to no-fault benefits under Liberty Mutual's Policy Number A05-221-060883-70, as referenced in the complaint; and it is further

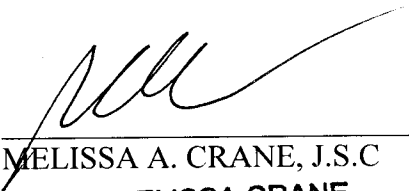
ADJUDGED AND DECLARED that defendants Yuderki De Los Santos, Osmin De La Cruz, Arden M Kaisman, MD, PC, GC Chiropractic, P.C., Graham Wellness Medical, P.C., Howard Beach Rehab, PT, PC, Lida's Medical Supply, Inc., Prosper Acupuncture, P.C., Sigma Med Care Inc., and Stand Up MRI Bensonhurst, are not entitled to no-fault coverage for the motor vehicle accident that occurred on April 21, 2016, for claims submitted under policy number Liberty Mutual's Policy Number A05-221-060883-70, as referenced in the complaint, and plaintiff Liberty Mutual has no duty to provide, pay, honor, or reimburse any claims in any current or future proceedings, including without limitation arbitrations and/or lawsuits, seeking to recover no-fault benefits arising out of the April 21, 2016 accident; and it is further

ADJUDGED AND DECLARED that the court permanently stays each part of any arbitration or court hearing brought by defendants Yuderki De Los Santos, Osmin De La Cruz, Arden M Kaisman, MD, PC, GC Chiropractic, P.C., Graham Wellness Medical, P.C., Howard Beach Rehab, PT, PC, Lida's Medical Supply, Inc., Prosper Acupuncture, P.C., Sigma Med Care Inc., and Stand Up MRI Bensonhurst, for no-fault benefits stemming from the April 21, 2016 accident; and it is further

ORDERED that the court grants a permanent injunction barring any arbitration or court hearing brought by defendants Yuderki De Los Santos, Osmin De La Cruz, Arden M Kaisman, MD, PC, GC Chiropractic, P.C., Graham Wellness Medical, P.C., Howard Beach Rehab, PT, PC, Lida's Medical Supply, Inc., Prosper Acupuncture, P.C., Sigma Med Care Inc., and Stand Up MRI Bensonhurst, for no-fault benefits stemming from the April 21, 2016 accident.

DATED: 1-3, 2019
New York, New York

ENTER:



MELISSA A. CRANE, J.S.C
HON. MELISSA CRANE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER
 FIDUCIARY APPOINTMENT