

Liberty Mut. Ins. Co. v Sanon
2019 NY Slip Op 31583(U)
May 30, 2019
Supreme Court, New York County
Docket Number: 652674/2018
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL
FIRE INSURANCE COMPANY,

Plaintiff,

- v -

JOSUE SANON, RALPH DURANDIS, WILFRED VERNET,
QUEVENET ANTOINE, ALL COUNTY, LLC, ALLCARE MEDICAL
SERVICES PC, APT PHYSICAL THERAPY, P.C., ARON ROVNER
MD, PLLC, AXIAL CHIROPRACTIC P.C., CECILE I FRAY M.D.,
PLLC, CENTRAL PARK PHYSICAL MEDICINE, P.C., CHL
LPHYSICAL THERAPY OF THE BRONX P.C., CUSTOM RX
PHARMACY LLC, DIGNITY PT, PC., EAST 19 MEDICAL SUPPLY
CORP., ESSENTIAL CHIROPRACTIC DIAGNOSTIC, PC,
EXPERT MEDICAL SUPPLICE INC., FIRST SPINE
CHIROPRACTIC OF NY P.C., FRIENDLY ACUPUNCTURE P.C.,
GEN CEL DIAGNOSTICS, JOURNEY ACUPUNCTURE P.C.,
MARYCARE PHYSICAL THERAPY P.C., MEI'S ACUPUNCTURE
P.C., METROPOLITAN INTERVENTIONAL MEDICAL SERVICES
P.C., MW ACUPUNCTURE P.C., NASSAU HEALTH CARE
CORPORATION, NASSAU COUNTY MEDICAL CENTER, NEW
AGE MEDICAL, P.C., NEW YORK PAIN MANAGEMENT GROUP,
PLLC, NORTH SHORE UNIVERSITY HOSPITAL, SANFORD
CHIROPRACTIC, P.C., SEAPORT CHIROPRACTIC, P.C., SOFT
TOUCH CHIROPRACTIC REHABILITATION P.C., SOUND
CHIROPRACTIC & PHYSICAL THERAPY, PLLC, SOUTHWEST
MEDICAL IMAGING P.C., STAND-UP MRI OF BENSONHURST,
P.C., TANDINGAN P.T.P.C., TITAN PHARMACY, WELL-BEING
CHIROPRACTIC, P.C., WELCOME CHIROPRACTIC, P.C.,
WELLMART RX, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment action, the plaintiffs move pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Josue Sanon, Ralph Durandis, Wilfred Vernet, and Quevenet Antoine (collectively, the "individual defendants"), as well as the defendants All County, LLC, AllCare Medical Services PC, APT Physical Therapy, P.C., Aron Rovner MD, PLLC, Axial Chiropractic P.C., Cecile I. Fray M.D., PLLC, Central Park Physical Medicine, P.C., CHL Physical Therapy of the Bronx P.C., Custom RX Pharmacy LLC, Dignity PT, P.C., Essential Chiropractic Diagnostic, PC, Expert Medical Supplies Inc, First Spine Chiropractic of NY P.C., Friendly Acupuncture P.C., Gen Cel Diagnostics, Journey Acupuncture P.C., MaryCare Physical Therapy P.C., Mel's Acupuncture P.C., Metropolitan Interventional Medical Services P.C., Mount Sinai Medical Supply Inc., MW Acupuncture P.C., Nassau Health

**DECISION, ORDER and
JUDGMENT**

Care Corporation, Nassau County Medical Center, New Age Medical, P.C., New York Pain Management Group, PLLC, North Shore University Hospital, Sanford Chiropractic, P.C., Soft Touch Chiropractic Rehabilitation P.C., Sound Chiropractic & Physical Therapy, PLLC, Tandingan P.T. P.C., and Titan Pharmacy (collectively, the "non-answering provider defendants"), declaring that they are not obligated to pay no-fault benefits to the individual defendants in connection with injuries that they sustained in a motor vehicle accident, or to reimburse the non-answering provider defendants for treatment they rendered or equipment and supplies they provided to the individual defendants for those injuries. The plaintiffs also move to permanently stay any arbitrations or court hearings brought by the individual defendants or the non-answering provider defendants for no-fault benefits stemming from the alleged occurrence involving the individual defendants. No opposition is submitted.

The motion is granted inasmuch as the plaintiffs have provided proof of service of the summons and complaint upon the defendants, proof of the facts constituting the claim, and proof of the defendants' defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1st Dept 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1st Dept 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

In their applications for no-fault benefits, the individual defendants alleged, *inter alia*, that they were injured in a motor vehicle accident on June 9, 2017, and that they thereafter obtained medical treatment or medical supplies from the non-answering provider defendants. According to the plaintiffs, the non-answering provider defendants sought payment, as assignees of the individual defendants, for no-fault benefits under insurance policy number AO2-228-359468-70, issued by the plaintiffs to Sanon, under claim numbers LA000-035671535-02, -03, and -09. See Insurance Law 5106(a); 11 NYCRR 65-1.1. The individual defendants Sanon, Vernet, and Antoine timely appeared for and submitted to an examination under oath (EUO). However, Sanon, Vernet, and Antoine each failed to respond to post-EUO document requests made by the plaintiffs. The individual defendant Durandis failed to appear for an EUO.

As proof of the facts constituting their claim, the plaintiffs submissions include, *inter alia*, the affidavits of an investigator in their Special Investigations Unit, Karen Castro, and of their Claims Department Team Manager, William Gang, as well as the transcripts of the EUOs of Sanon, Vernet, and Antoine, and the denials of claim issued by the plaintiffs. The plaintiffs' submissions demonstrate, *prima facie*, that they properly denied coverage on the basis that the subject motor vehicle collision in which the individual defendants claimed to have been injured was not accidental but was intentional or staged, and thus not a covered incident under the subject no-fault policy. "An intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance." Matter of Liberty Mut. Ins. Co. v Goddard, 29 AD3d 698, 699 (2nd Dept 2006); see Matter of GEICO v Robbins, 15 AD3d 484 (2nd Dept. 2005).

More specifically, the plaintiffs' submissions show, among other things, that (a) none of the individual defendants could recall the location of the collision, the appearance of the other

car involved, the rate of speed of either car involved, or whether any airbags went off, (b) the individual defendants contradicted one another and gave inconsistent responses when asked about where they drove prior to the collision, (c) Durandis, who sat in the passenger seat, was allegedly unknown to any of the other individual defendants, (d) only two of the individual plaintiffs were taken to the hospital following the collision and were discharged the same night, and the remaining two individual defendants declined medical care at the scene of the accident, only to begin seeking significant medical treatment a few days after the accident, and ultimately seeking treatment resulting in \$79,936.50 in medical bills; (e) none of the individual defendants provided any documentation with regard to the status the vehicle that they were driving, which was allegedly damaged; and (f) no witness names or photographs from the scene of the accident were provided by any of the individual defendants. See DSD Acupuncture, P.C. v Met Life Auto & Home, 49 Misc 3d 153(A) (App Term, 2nd Dept. 2nd & 11th Jud. Dists. 2015); 21st Century Ins. Co. v Peebles, 2015 NY Slip Op 31695(U), 2015 N.Y. Misc. LEXIS 3255 (Sup Ct, NY County 2015); cf. Nationwide Gen. Ins. Co. v Bates, 130 AD3d 795 (2nd Dept. 2015).

The plaintiffs further established that they notified Durandis to appear for an Examination Under Oath (EUO), and that he failed to appear for that and a second EUO, both duly scheduled and noticed, thereby violating a condition precedent to coverage. See Insurance Law 5106(a); 11 NYCRR 65-1.1; Stephen Fogel Psychological, PC v Progressive Cas. Ins. Co., 35 AD3d 720 (2nd Dept. 2006); Clinton Place Medical, P.C. v New York Central Mutual Fire Ins. Co., 43 Misc 3d 127(A) (App Term, 2nd, 11th and 13th Jud Dists 2014). Similarly, although Sanon, Vernet, and Antoine did appear for their EUOs, the plaintiffs established that at the time of the EUOs and by written request following the EUOS, they requested certain pertinent information supporting the individual defendants' claims be produced, and that the individual defendants nonetheless failed to respond to their requests, thereby vitiating no-fault coverage. See Insurance Law 5106(a); 11 NYCRR 65-1.1.

Having failed to answer or oppose this motion, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

The court notes that pursuant to three separate stipulations dated February 8, 2019, February 22, 2019, and February 28, 2019, respectively, the plaintiffs discontinued this action as against the non-answering provider defendants Cecile I. Fray, M.D., PLLC, Central Park Physical Medicine, P.C., Custom RX Pharmacy, LLC, Journey Acupuncture PC, and Mount Sinai Medical Supply Inc. As such, the instant motion is deemed withdrawn as against those defendants.

The court further notes that this action was discontinued prior to the filing of this motion as against defendants Southwest Medical Imaging, P.C., Seaport Chiropractic, P.C., Well Being Chiropractic, P.C., East 19 Medical Supply Corp., and Stand Up MRI Bensohurst, P.C., and that defendants Welcome Chiropractic, P.C., and Wellmart RX, Inc., have filed answers and counterclaims. This judgment does not apply to those defendants.

Accordingly, it is

ORDERED that the plaintiffs' motion for leave to enter a default judgment is deemed withdrawn as against defendants Cecile I. Fray, M.D., PLLC, Central Park Physical Medicine, P.C., Custom RX Pharmacy, LLC, Journey Acupuncture PC, and Mount Sinai Medical Supply Inc., and that the motion is granted as modified; and it is further,

ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to the to the defendants Josue Sanon, Ralph Durandis, Wilfred Vernet, and Quevenet Antoine (the "individual defendants") in connection with claims made under insurance policy number AO2-228-359468-70, claim numbers LA000-035671535-02, -03, and -09 for injuries that they sustained in a motor vehicle accident on June 9, 2017, or to reimburse the defendants All County, LLC, AllCare Medical Services PC, APT Physical Therapy, P.C., Aron Rovner MD, PLLC, Axial Chiropractic P.C., CHL Physical Therapy of the Bronx P.C., Dignity PT, P.C., Essential Chiropractic Diagnostic, PC, Expert Medical Supplies Inc, First Spine Chiropractic of NY P.C., Friendly Acupuncture P.C., Gen Cel Diagnostics, MaryCare Physical Therapy P.C., Mel's Acupuncture P.C., Metropolitan Interventional Medical Services P.C., MW Acupuncture P.C., Nassau Health Care Corporation, Nassau County Medical Center, New Age Medical, P.C., New York Pain Management Group, PLLC, North Shore University Hospital, Sanford Chiropractic, P.C., Soft Touch Chiropractic Rehabilitation P.C., Sound Chiropractic & Physical Therapy, PLLC, Tandingan P.T. P.C., or Titan Pharmacy (the "non-answering provider defendants") for treatment they rendered or equipment and supplies they provided to the individual defendants for those injuries; and it is further,

ADJUDGED AND DECLARED that all actions, proceedings or arbitrations commenced by the individual defendants or the non-answering provider defendants arising from injuries alleged to have been sustained by the individual defendants as a result of the June 9, 2017, accident are permanently stayed, and that the individual defendants and the non-answering provider defendants are enjoined from commencing any such further actions, proceedings or arbitrations; and it is further,

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order.

This constitutes the Decision, Order, and Judgment of the court.

5/30/2019
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Nancy M. Bannon
HON. NANCY M. BANNON