

**Liberty Mut. Ins. Co. v Russ**

2019 NY Slip Op 31584(U)

May 31, 2019

Supreme Court, New York County

Docket Number: 652677/2018

Judge: Nancy M. Bannon

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

*Justice*

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LIBERTY MUTUAL INSURANCE COMPANY, LM INSURANCE CORPORATION,

Plaintiff,

- v -

WILLIAM E. RUSS, APS CHIROPRACTIC SERVICES, P.C., CHIROPRACTIC DIAGNOSTIC P.C., CITIMED SERVICES PA, DIGNITY PT, P.C., DYNAMIC SURGERY CENTER LLC, EAST 19 MEDICAL SUPPLY CORP., FJ ORTHOPAEDICS AND PAIN MANAGEMENT PLLC, FOREST DRUGS, HEALTHCRAFT PT, P.C., HEALTHWISE MEDICAL ASSOCIATES P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, METROPOLITAN SPECIALTY LAB'S, INC., MOUNT SINAI MEDICAL SUPPLY INC., MSJR OF QUEENS PC, QB ACUPUNCTURE P.C., SMART TOUCH PT P.C., SOLOMON HALIOUA MD, SPINE CARE OF NJ PC, TANDINGAN P.T.P.C., WESTCHESTER RADIOLOGY & IMAGING, P.C., YJR ACUPUNCTURE P.C.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for JUDGMENT - DEFAULT

**DECISION, ORDER, AND JUDGMENT**

In this declaratory judgment action, the plaintiffs move pursuant to CPLR 3215 for leave to enter a default judgment against the defendant William E. Russ, as well as the defendants APS Chiropractic Services, P.C., Chiropractic Diagnostic P.C., Citimed Services PA, Dignity PT, P.C., Dynamic Surgery Center LLC, FJ Orthopaedics and Pain Management PLLC, Forest Drugs, Healthcraft PT, P.C., Healthwise Medical Associates P.C., Metro Pain Specialists Professional Corporation, Metropolitan Specialty Lab's, Inc., Mount Sinai Medical Supply Inc., MSJR of Queens PC, QB Acupuncture P.C., Smart Touch PT P.C., Solomon Halioua MD, Spine Care of NJ PC, Tandingan P.T. P.C., and Westchester Radiology & Imaging, P.C. (collectively the nonanswering medical defendants), declaring that they are not obligated to pay no-fault benefits to Russ in connection with injuries that he sustained in a motor vehicle accident, or to reimburse the nonanswering medical defendants for treatment they rendered or equipment and supplies they provided to him for those injuries. No opposition is submitted. The motion is granted.

Russ claimed that he was injured in a motor vehicle accident on May 30, 2017, and that he thereafter obtained medical treatment or medical supplies from the nonanswering medical defendants, among others. The nonanswering medical defendants sought payment, as Russ's

assignees, for no-fault benefits under insurance policy number A0522111158370, as issued by the plaintiffs to Russ under claim number LA000-035661828-01. See Insurance Law 5106(a); 11 NYCRR 65-1.1. Russ timely appeared for and submitted to an examination under oath (EUO). The plaintiffs timely denied the numerous claims for benefits, beginning on or about September 11, 2017 (see 11 NYCRR 65-3.8[a][1]), concluding that, based on his testimony at the EUO and its own investigation, Russ made material misrepresentations in his initial application for the issuance of the subject insurance policy with respect to where the insured vehicle was usually garaged and maintained in order to lower the cost of obtaining the policy, and that coverage was thus vitiated.

Where a plaintiff moves for leave to enter a default judgment, it must submit proof of the facts constituting the claim, and proof of the defendant's default (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1<sup>st</sup> Dept 2016]). The plaintiffs submit the affidavits of service referable to service of the summons and complaint upon Russ and the nonanswering medical defendant, and an attorney's affirmation. As proof of the facts constituting their claims, the plaintiffs submit the affidavits of their Personal Markets Division representative, Nicholas Marrangoni, their Special Investigations Unit investigator, Karen Castro, and their Claims Department Team Manager, William Gang, along with the transcript of Russ's EUO testimony, and the denials of claim issued by the plaintiffs. The affidavits of service establish that Russ and the nonanswering medical defendants were served with process, and the attorney's affirmation establishes that these defendants did not answer or appear.

Where an insured makes material misrepresentations on his or her application for insurance as to where he or she regularly garages a vehicle sought to be insured, coverage is defeated. See Remedial Med. Care, P.C. v Infinity Prop. & Cas. Co., 2017 NY Slip Op 50391(U), 55 Misc. 3d 130(A) (App. Term, 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Jud. Dists., Mar. 31, 2017); Jamaica Dedicated Med. Care, P.C. v Praetorian Ins. Co., 2015 NY Slip Op 50756(U), 47 Misc. 3d 147(A) (App. Term, 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Jud. Dists., May 6, 2015). The plaintiffs' proof establishes, prima facie, the facts underpinning their contentions, namely, that when Russ first applied for insurance coverage, he represented that he resided with his sister in Newburgh, New York, and that the insured vehicle was regularly garaged there, but that he had an apartment in a residential building New York, New York, where he has paid rent for 25 years and where he receives all mail correspondence other than insurance correspondence with the plaintiffs, and kept the vehicle garaged there, where premium rates are substantially higher than for vehicles garaged in Newburgh. Marrangoni asserted that, when Russ first applied for the subject insurance policy, he reported Newburgh, New York, as his home and the location where the insured vehicle was to be garaged. The denial-of-claim statements show that the relevant denials of coverage were expressly based on the ground that Russ made material misrepresentations in connection with his application for insurance with respect to the where the vehicle was regularly garaged in order to reduce his insurance premium rates.

The court notes that the defendant YJR Acupuncture P.C. interposed an answer on July 20, 2018, and that this action was discontinued against the defendant East 19 Medical Supply

Corp. by stipulation dated November 28, 2018. This judgment does not apply to those defendants.

Accordingly, it is

ORDERED that the plaintiffs' motion for leave to enter a default judgment against the defendants William E. Russ, APS Chiropractic Services, P.C., Chiropractic Diagnostic P.C., Citimed Services PA, Dignity PT, P.C., Dynamic Surgery Center LLC, FJ Orthopaedics and Pain Management PLLC, Forest Drugs, Healthcraft PT, P.C., Healthwise Medical Associates P.C., Metro Pain Specialists Professional Corporation, Metropolitan Specialty Lab's, Inc., Mount Sinai Medical Supply Inc., MSJR of Queens PC, QB Acupuncture P.C., Smart Touch PT P.C., Solomon Halioua MD, Spine Care of NJ PC, Tandingan P.T. P.C., and Westchester Radiology & Imaging, P.C. is granted; and it is further,

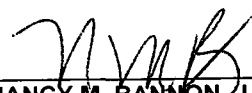
ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to the to the defendant William E. Russ in connection with injuries that he sustained in a motor vehicle accident on May 30, 2017, or to reimburse the defendants APS Chiropractic Services, P.C., Chiropractic Diagnostic P.C., Citimed Services PA, Dignity PT, P.C., Dynamic Surgery Center LLC, FJ Orthopaedics and Pain Management PLLC, Forest Drugs, Healthcraft PT, P.C., Healthwise Medical Associates P.C., Metro Pain Specialists Professional Corporation, Metropolitan Specialty Lab's, Inc., Mount Sinai Medical Supply Inc., MSJR of Queens PC, QB Acupuncture P.C., Smart Touch PT P.C., Solomon Halioua MD, Spine Care of NJ PC, Tandingan P.T. P.C., and Westchester Radiology & Imaging, P.C. for treatment they rendered or equipment and supplies they provided to him for those injuries; and it is further,

ADJUDGED AND DECLARED that all actions, proceedings or arbitrations commenced by William E. Russ, APS Chiropractic Services, P.C., Chiropractic Diagnostic P.C., Citimed Services PA, Dignity PT, P.C., Dynamic Surgery Center LLC, FJ Orthopaedics and Pain Management PLLC, Forest Drugs, Healthcraft PT, P.C., Healthwise Medical Associates P.C., Metro Pain Specialists Professional Corporation, Metropolitan Specialty Lab's, Inc., Mount Sinai Medical Supply Inc., MSJR of Queens PC, QB Acupuncture P.C., Smart Touch PT P.C., Solomon Halioua MD, Spine Care of NJ PC, Tandingan P.T. P.C., or Westchester Radiology & Imaging, P.C. arising from injuries alleged to have been sustained by the individual defendants as a result of the May 30, 2017, accident are permanently stayed, and that the foregoing 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.

5/31/2019  
DATE

  
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NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE