

Country-Wide Ins. Co. v Williams
2019 NY Slip Op 33671(U)
December 13, 2019
Supreme Court, New York County
Docket Number: 652530/2018
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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INDEX NO. 652530/2018

COUNTRY-WIDE INSURANCE COMPANY,

MOTION DATE 09/20/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

TASHA WILLIAMS, NEW YORK CITY HEALTH AND
HOSPITALS D/B/A QUEENS HOSPITAL CENTER, NYH-
CUMC PATHOLOGISTS, DAMADIAN MRI IN CANARSIE,
P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW
YORK WELLNESS PT, P.C., MANLI LI, NY CHIROPRACTIC
REHABILITATION P.C., ASSEM PHYSICAL THERAPY,
P.C., AFFINITY ACUPUNCTURE HEALTH CARE,
PLLC, SUFFICIENT CHIROPRACTIC CARE,
PLLC, MEDIGNA INC., METROPOLITAN SPECIALTY
LAB'S, INC., ATLAS PHARMACY LLC, MODERN
BROOKLYN MEDICAL, PC, TOTAL CHIROPRACTIC
P.C., TRINITY MEDICINE P.C., ADVANCED RECOVERY
EQUIPMENT AND SUPPLIES LLC, MILLENNIUM
AMBULATORY SURGERY CENTER, L.L.C., NOEL
RUPIDO SIAPNO PT, BROOK CHIROPRACTIC OF NY
P.C., AMC PSYCHOLOGY, P.C., ARTHUR AVENUE
MEDICAL SERVICES, P.C., NEW YORK SPINE
SPECIALISTS, LLP, ROXBURY ANESTHESIA, LLC, JAN
SCHREUDER, M.D.

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for

JUDGMENT - DEFAULT

In this action, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Tasha Williams (the individual defendant) and NYH-CUMC Pathologists, Damadian MRI in Canarsie, P.C., Metropolitan Medical & Surgical P.C., New York Wellness PT, P.C., Manli Li, NY Chiropractic Rehabilitation P.C., Assem Physical Therapy, P.C., Affinity Acupuncture Health Care, PLLC, Sufficient Chiropractic Care, PLLC, Medigna Inc., Metropolitan Specialty Labs, Inc., Atlas Pharmacy LLC, Modern Brooklyn Medical, PC, Trinity Medicine P.C., Advanced Recovery Equipment and Supplies LLC, Millennium Ambulatory Surgery Center LLC, Noel Rupido Siapno PT, AMC Psychology, P.C., Arthur Avenue Medical

Services, P.C., New York Spine Specialists, LLP, and Roxbury Anesthesia, LLC (the non-answering health-care defendants), declaring that it is not obligated to pay no-fault benefits to the individual defendant or the health-care defendants to reimburse them for treatment they rendered or medical equipment they provided to the individual defendant for injuries allegedly sustained in an auto accident on July 21, 2017 on the grounds that eligible injury party defendant failed to appear for duly scheduled Examinations Under Oath (EUOs). No opposition was submitted. The plaintiff's motion is granted inasmuch as the plaintiff has provided proof of timely 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).

As a preliminary matter, the court notes that the action was discontinued as against Jan Schreuder M.D. by stipulation of discontinuance dated August 23, 2018, defendants Total Chiropractic P.C., and Brook Chiropractic of NY P.C. answered the complaint on June 20, 2018, and plaintiff does not move for default judgment as against defendant New York City Heath and Hospitals d/b/a Queens Hospital Center.

In the application for no-fault benefits, the individual defendant alleged, inter alia, that she was injured in a motor vehicle accident on July 21, 2017, and that she thereafter obtained medical treatment or medical supplies from the health-care defendants. According to the plaintiff, the health-care defendants sought payment under claim number 000329138-001, as assignees of the individual defendant, for no-fault benefits under insurance policy number RS8138176L7. See Insurance Law 5106(a); 11 NYCRR 65-1.1. The plaintiff started to receive claims for the individual defendant's care on or about August 28, 2017 and continued to receive claims through September 12, 2017. The plaintiff mailed its first notice for an EUO to be held on October 11, 2017 to the individual defendant on September 27, 2017. The individual defendant did not attend either the first or second rescheduled EUO, and the plaintiff now seeks default judgment stating that it is not required to pay the no-fault benefits as the individual defendant's coverage is vitiated.

The plaintiff's submissions demonstrate that the initial notice for an examination under oath (EUO) was timely mailed to the individual defendant within 15 days of its receipt of the

health-care defendants' September 12, 2018 NF-3 forms, as required by 11 NYCRR 65-3.5(b). See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1st Dept. 2017); National Liability & Fire Ins. Co. v Tam Med. Supply Corp., 131 AD3d 851, 851 (1st Dept 2015); American Tr. Ins. Co. v Jaga Med. Servs., P.C., 128 AD3d 441, 441 (1st Dept 2015). They also showed that the individual defendant did not appear for the initially scheduled EUO, and was provided timely notice of a rescheduled EUO, but failed to appear for that as well. The plaintiff consequently provided prima facie evidence that, by failing to appear, the individual defendant breached a condition precedent to the effectiveness of no-fault insurance coverage, thus vitiating that coverage. See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., supra; Hertz Corp. v Active Care Med. Supply Corp., 124 AD3d 411 (1st Dept. 2015); Allstate Ins. Co. v Pierre, 123 AD3d 618 (1st Dept. 2014).

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment against the defendants Tasha Williams (the individual defendant) and NYH-CUMC Pathologists, Damadian MRI in Canarsie, P.C., Metropolitan Medical & Surgical P.C., New York Wellness PT, P.C., Manli Li, NY Chiropractic Rehabilitation P.C., Assem Physical Therapy, P.C., Affinity Acupuncture Health Care, PLLC, Sufficient Chiropractic Care, PLLC, Medigna Inc., Metropolitan Specialty Labs, Inc., Atlas Pharmacy LLC, Modern Brooklyn Medical, PC, Trinity Medicine P.C., Advanced Recovery Equipment and Supplies LLC, Millennium Ambulatory Surgery Center LLC, Noel Rupido Siapno PT, AMC Psychology, P.C., Arthur Avenue Medical Services, P.C., New York Spine Specialists, LLP, and Roxbury Anesthesia, LLC (the non-answering health-care defendants) is granted; and it is further

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to the defendant Tasha Williams for injuries that she allegedly sustained in a motor vehicle accident on July 21, 2017, or to the defendants NYH-CUMC Pathologists, Damadian MRI in Canarsie, P.C., Metropolitan Medical & Surgical P.C., New York Wellness PT, P.C., Manli Li, NY Chiropractic Rehabilitation P.C., Assem Physical Therapy, P.C., Affinity Acupuncture Health Care, PLLC, Sufficient Chiropractic Care, PLLC, Medigna Inc., Metropolitan Specialty Labs, Inc., Atlas Pharmacy LLC, Modern Brooklyn Medical, PC, Trinity Medicine P.C., Advanced Recovery Equipment and Supplies LLC, Millennium Ambulatory Surgery Center LLC, Noel Rupido Siapno PT, AMC Psychology, P.C., Arthur Avenue Medical Services, P.C., New York

