

Liberty Mut. Ins. Co. v Bacchus
2020 NY Slip Op 30327(U)
January 3, 2020
Supreme Court, New York County
Docket Number: 656219/2018
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON
Justice

PART IAS MOTION 42EFM

-----X
LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 656219/2018
MOTION DATE 9/20/2019
MOTION SEQ. NO. 001

- v -

MOHAMED BACCHUS, MYRTLE DME NYC INC.,APAK
CHIROPRACTIC P.C.,CITIMEDICAL 1, PLLC,EPIONE
MEDICAL, P.C.,NYC SPORTS ACUPUNCTURE
P.C.,WELLMART RX, INC.

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 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.

In this declaratory judgment action, the plaintiffs move pursuant to CPLR 3215 for leave to enter a default judgment against the individual defendant, Mohamed Bacchus (Bacchus), as well as provider defendants Myrtle Dme NYC Inc., Apak Chiropractic PC, Citimedical 1 PLLC, Epione Medical PC, NYC Sports Acupuncture PC, (collectively the non-answering defendants) declaring that they are not obligated to pay no-fault benefits to Bacchus in connection with injuries he sustained in a motor vehicle accident, or to reimburse the non-answering medical defendants for treatment they rendered or equipment and supplies they provided to him for those injuries. No opposition is submitted.

Bacchus claimed that he was injured in a motor vehicle accident on February 22, 2018, and that he thereafter obtained medical treatment or medical supplies from the non-answering medical defendants, among others. The non-answering medical defendants sought payment,

as Bacchus' assignees, for no-fault benefits under insurance policy number AOS25860090140, as issued by the plaintiffs to Bacchus under claim number LA000-037035318-05. See Insurance Law 5106(a); 11 NYCRR 65-1.1. Whittaker 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 25, 2018 (see 11 NYCRR 65-3.8[a][1]), concluding that, based on his testimony at the EUO and its own investigation, Bacchus 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 [1st Dept. 2016]). The plaintiffs submit the affidavits of service referable to service of the summons and complaint upon Bacchus and the non-answering medical defendants, 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, David DeGeorge, and their Claims Department Team Manager, William Gang, along with the transcript of Bacchus' EUO testimony, and the denials of claim issued by the plaintiffs. The affidavits of service establish that Bacchus and the non-answering 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, 2nd, 11th & 13th 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, 2nd, 11th & 13th Jud. Dists., May 6, 2015). The plaintiffs' proof establishes, prima facie, the facts underpinning their contentions, namely, that when Bacchus first applied for insurance coverage, he represented that he resided at 11517 SW 174th St., Miami, Florida and that the insured vehicle was regularly garaged there, but that, in fact, he had not lived at that address for approximately ten years, and instead lived at 9360 205th St., Hollis, New York, where premium rates are significantly higher than for vehicles garaged in Miami. The denial-of-claim statements show that the relevant denials of coverage were expressly based on the ground that Bacchus 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 defendant Wellmart Rx, Inc. interposed an answer in this action.

Accordingly, it is

ORDERED that the motion for leave to enter a default judgment is granted, without opposition, and it is further

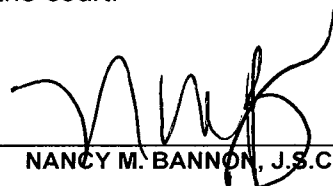
ORDERED, ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to the the defendant Mohammad Bacchus in connection with injuries that he sustained in a motor vehicle accident on February 22, 2018, or to reimburse the defendants Myrtle Dme NYC Inc., Apak Chiropractic PC, Citimedical 1 PLLC, Epione Medical PC, NYC Sports Acupuncture PC, for treatment they rendered or equipment and supplies supplied to him for those injuries; and it is further,

ADJUDGED AND DECLARED that all actions, proceedings or arbitrations commenced by Mohammad Bacchus, Myrtle Dme NYC Inc., Apak Chiropractic PC, Citimedical 1 PLLC, Epione Medical PC, NYC Sports Acupuncture PC, arising from injuries alleged to have been sustained by the individual defendant as a result of the February 22, 2018, accident are permanently stayed, and that the individual defendant 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.

1/3/2020
DATE


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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE