

Liberty Mut. Ins. Co. v Guede
2020 NY Slip Op 30450(U)
February 13, 2020
Supreme Court, New York County
Docket Number: 651721/2019
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. 651721/2019

LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

MOTION DATE 01/09/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

HUGHES GUEDE, AKAI ACUPUNCTURE P.C., COMFORT
PHYSICAL THERAPY, PLLC, FIVE BOROUGH SUPPLY
INC., LYONS MEDICAL P.C., ELMWOOD PARK MEDICAL
GROUP PC, RF CHIROPRACTIC IMAGING,
P.C., PREFERRED MEDICAL, P.C., MUSCULOSKELETAL
PAIN MANAGEMENT P.C., PHYSICAL THERAPY REHAB,
P.C., MALA RX INC. D/B/A SUNNYSIDE PHARMACY
INC., TRIBORO CHIROPRACTIC, P.C.,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

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, Hughes Guede (Guede), as well as
provider defendants Comfort Physical Therapy PLLC, Five Borough Supply Inc., Lyons Medical
PC, RF Chiropractic Imaging PC, Preferred Medical PC, Physical Therapy Rehab PC,
(collectively the non-answering defendants) declaring that they are not obligated to pay no-fault
benefits to Guede 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.

The court notes that by a Stipulation of Discontinuance dated January 2, 2020, the
plaintiffs discontinued the action as against defendant Five Borough Supply Inc. Therefore, the
instant motion is deemed withdrawn as against that defendant alone. The motion is granted as
modified.

Guede claimed that he was injured in a motor vehicle accident on September 9, 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 Guede's assignees, for no-fault benefits under insurance policy number AOS28129705740, as issued by the plaintiffs to non-party Zouzouko Guemane Duncan (Duncan) under claim number LA00003821037003. See Insurance Law 5106(a); 11 NYCRR 65-1.1. Guede timely appeared for and submitted to an examination under oath (EUO). The plaintiffs timely denied the numerous claims for benefits, beginning on or about October 8, 2018 (see 11 NYCRR 65-3.8[a][1]), concluding that, based on his testimony at the EUO and their own investigation, there were material misrepresentations in the initial application for the issuance of the subject insurance policy with respect to who the actual owner and driver of the insured vehicle was and where the 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]), timely move for relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455 [1st Dept. 2015]), and satisfy the notice requirements for this motion, as articulated in CPLR 3215(g). In support of their motion, the plaintiffs submit the affidavits of service of the summons and complaint upon Guede and the non-answering medical defendants, and an attorney's affirmation. The affidavits of service establish that Guede and the non-answering medical defendants were effectively served and the attorney's affirmation establishes that these defendants did not answer or appear.

Moreover, 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, Anna Altieri, and their Claims Department Team Manager, Dawn Smith, along with the transcript of Guede's EUO testimony, and the denials of claim issued by the plaintiffs. Guede's EUO transcript revealed that he lives at 143-32 229th Street, Jamaica, New York 11413, and that Duncan was the mother of his girlfriend. Guede's testimony further revealed that he is the actual owner and operator of the vehicle, as Duncan has never possessed or driven the vehicle, and that Guede purchased the vehicle, paid all insurance

premiums through his own checking account, and did not live at the address in Philadelphia, Pennsylvania used to secure the insurance policy.

Where an insured makes material misrepresentations on his or her application for insurance as to the actual owner of a vehicle or where he or she regularly garages a vehicle sought to be insured, the insured, or assignees of the insured may be denied no-fault insurance benefits. 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*, that when Duncan applied for insurance coverage representing that she resided in Philadelphia, Pennsylvania, and that the insured vehicle was regularly garaged there, the actual owner and driver of the vehicle was Guede and the car was actually garaged at 142-32 229th Street in Jamaica, New York where, as detailed in the affidavit of Nicholas Marrangoni, premium rates are substantially higher.

Accordingly, it is

ORDERED that, upon the parties' Stipulation of Discontinuance dated January 2, 2020, attached, the action is discontinued and the complaint is dismissed, with prejudice and without costs, as to defendant Five Borough Supply Inc., and the plaintiffs' instant motion for leave to enter a default judgment is deemed withdrawn as against that defendant; and the motion as modified is granted; without opposition, and it is further,


ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to the to the defendant Hughes Guede in connection with injuries that he sustained in a motor vehicle accident on September 9, 2018, or to reimburse the defendants Comfort Physical Therapy PLLC, Lyons Medical PC, RF Chiropractic Imaging PC, Preferred Medical PC, Physical Therapy Rehab 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 Hughes Guede, Comfort Physical Therapy PLLC, Lyons Medical PC, RF Chiropractic Imaging PC, Preferred Medical PC, Physical Therapy Rehab PC arising from injuries alleged to

have been sustained by the individual defendant as a result of the September 9, 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.

<u>2/13/2020</u> DATE		 _____ NANCY M. BANNON, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINANCIAL PROCEEDING
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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"/> REFERENCE

HON. NANCY M. BANNON