

**State Farm Fire & Cas. Co. v Accelerated Surgical
Ctr., P.C.**

2020 NY Slip Op 31182(U)

May 5, 2020

Supreme Court, New York County

Docket Number: 158090/2019

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

INDEX NO. 158090/2019

MOTION DATE 03/20/2020

MOTION SEQ. NO. 001

ACCELERATED SURGICAL CENTER, P.C., ADVANCED COMPREHENSIVE LABORATORY, ALEMAN CHIROPRACTIC SERVICES, P.C., CROSSTOWN MEDICAL, P.C., DAHU ACUPUNCTURE, P.C., DM CHIROPRACTIC, P.C., DOS MANOS CHIROPRACTIC, P.C., HARBOR MEDICAL GROUP, P.C., HAMID LALANI, M.D., LONGEVITY MEDICAL SUPPLY, INC., MEDALLIANCE MEDICAL HEALTH SERVICES, INC., MILL MEDICAL, P.C., DAVID MINOZZI, D.C., NBC HEALTH PHYSICAL THERAPY, P.C., NORTHERN BRONX PHYSICAL THERAPY, P.C., RAPID IMAGING CORP., RIDEGWOOD DIAGNOSTIC LABORATORY, LLC, RIVERSIDE MEDICAL SERVICES, P.C., CMA PSYCHOLOGY, P.C., ACCELERATED SURGICAL CENTER OF NORTH JERSEY, LLC, GINGER SAMS and VICKY JAMES.

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 (Motion 001)

were read on this motion to/for DEFAULT JUDGMENT.

In this declaratory judgment action, the plaintiff insurer moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Ginger Sams and Vicky James (together the claimant defendants), as well as the defendants Accelerated Surgical Center, P.C., Advanced Comprehensive Laboratory, Aleman Chiropractic Services, P.C., Crosstown Medical, P.C., Dahu Acupuncture, P.C., DM Chiropractic, P.C., Dos Manos Chiropractic, P.C., Harbor Medical Group, P.C., Hamid Lalani, M.D., Medalliance Medical Health Services, Inc., Mill Medical, P.C., David Minozzi, P.C., NBC Health Physical Therapy, P.C., Northern Bronx Physical Therapy, P.C., Rapid Imaging Corp., Ridgewood Diagnostic Laboratory, LLC, Riverside Medical Services, P.C., CMA Psychology, P.C., and Accelerated Surgical Center of North Jersey, LLC (collectively the nonanswering medical defendants), declaring that it is not

obligated to pay no-fault benefits to or on behalf of the claimant defendants in connection with injuries that they allegedly sustained in a motor vehicle accident, or to reimburse the nonanswering medical defendants for treatment they rendered or equipment and supplies they provided to the claimant defendants for those injuries. No opposition is submitted. The motion is granted.

The claimant defendants asserted that they were injured in a motor vehicle accident on January 22, 2019, and that they thereafter obtained medical treatment or medical supplies from the nonanswering medical defendants, among others. The nonanswering medical defendants sought payment, as assignees of the claimant defendants, for no-fault benefits under insurance policy number 22-2679-132, as issued by the plaintiff to Sams, as the owner of the subject vehicle, under claim number 32-7417-XOS (see Insurance Law 5106[a]; 11 NYCRR 65-1.1). The claimant defendants timely appeared for and submitted to an examination under oath (EUO). The plaintiff timely denied the numerous claims for benefits (see 11 NYCRR 65-3.8[a][1]), concluding that, based on the claimant defendants' testimony at their EUOs, their documentary submissions to the plaintiff, and its own investigation, coverage was vitiated because (a) Sams made material misrepresentations in her 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, (b) Sams staged the subject accident, and (c) both claimant defendants refused to answer any questions at their EUOs concerning how the collision occurred, how fast the vehicle that allegedly struck their vehicle was traveling, whether their vehicle was moving or stopped at the time of the collision, the traffic conditions at the time of the collision, and other questions relating to the collision.

As set forth in the affidavit of the plaintiff's no-fault claims specialist, Steve O'Neill, Sams, when applying for insurance, represented to the plaintiff that the subject vehicle was primarily garaged at 712 Union Street, Schenectady, New York, but that Sams's registration indicated that the vehicle was in fact garaged at 1314 Virginia Avenue, Bronx, New York.

Although Sams submitted a paystub from the Schenectady Museum of Innovation and Science to the plaintiff as proof that she resided in Schenectady the plaintiff's investigation revealed that the vehicle's license plate, as identified in the police accident report, "shows a large number of hits in the Bronx, with none in Schenectady," and that Sams had never worked at the museum. In fact, the museum provided the plaintiff's investigator with an exemplar of its usual paystub that was completely different from the one submitted by Sams. In any event, at her EUO, Sams conceded that she had resided in the Bronx for five years, she visited Schenectady only sporadically, and that the vehicle was garaged primarily in the Bronx; she also denied that she had submitted the fraudulent paystub, and asserted that she did not know who might have submitted it on her behalf.

Moreover, there was no visible damage to the insured vehicle after the accident, and Sams did not seek medical attention at the time of the accident, yet racked up more than \$10,000 in chiropractic, acupuncture, and medical equipment charges. Although James, who was a passenger in Sams's vehicle at the time of the accident, was taken to a local hospital immediately after the accident, she refused treatment there, yet also racked up more than \$10,000 in chiropractic, acupuncture, and medical equipment charges.

In addition, a review of the EUO transcripts confirms that the claimant defendants refused to answer relevant questions as to how the accident transpired.

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 plaintiff submit the affidavits of service referable to service of the summons and complaint upon the claimant defendants and the nonanswering medical defendants, and an attorney's affirmation. As proof of the facts constituting its claims, the plaintiffs submit both O'Neill's affidavit and the affidavit of no-fault underwriter Amanda Roberts, who asserts that the plaintiff would never have issued the subject policy to Sams at the rate it charged had it known that the vehicle would be garaged in the

Bronx. The plaintiff also submits a printout of the history of the subject license plate, Sams's purported paystub, an exemplar of an actual paystub from the Schenectady Museum Association, the entity that operates the Schenectady Museum of Innovation and Science, transcripts of the claimant defendants' EUO testimony, and the relevant police accident report. The affidavits of service establish that the claimant defendants 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, 2d, 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, 2d, 11th & 13th Jud Dists, May 6, 2015]). The plaintiff's proof establishes, *prima facie*, the facts underpinning its contentions, namely, that when Sams first applied for insurance coverage, she represented that she resided in Schenectady, New York, and that the insured vehicle was regularly garaged there, but that she actually resided and garaged the vehicle in the Bronx, where premium rates are substantially higher than for vehicles garaged in Schenectady.

An insurer may also disclaim all insurance coverage based upon "the fact or founded belief that the alleged injury does not arise out of an insured incident" (*Central Gen. Hosp. v Chubb Grp. of Ins. Co.*, 90 NY2d 195, 199 [1997]). "A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident" (*State Farm Mut. Auto. Ins. Co. v. Laguerre*, 305 AD2d 490, 491 [2d Dept 2003]). In meeting its burden of establishing that a collision was deliberate, a no-fault insurer is "not required to establish that the subject collision was the product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence" (*V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc 3d 39, 41, [App Term, 2nd & 11th Jud Dists 2009] [citation omitted]). Rather, the insurer need only

demonstrate the facts elicited during an investigation that support such a founded belief (see *id.*). Circumstantial evidence is sufficient to prove such facts if a party's conduct "may be reasonably inferred based upon logical inferences to be drawn from the evidence" (*Benzaken v Verizon Communications. Inc.*, 21 AD3d 864, 865 [2d Dept 2005] [citation and internal quotation marks omitted]; see *Kemper Independence Ins. Co. v Best Touch PT, P.C.*, 2018 NY Slip Op 31241 [U], Sup Ct, N.Y. County, Jun. 19, 2018]). The plaintiff has submitted significant evidence supporting its conclusion that the accident was staged in order to obtain insurance benefits.

In addition, the claimant defendants' "failure to answer all relevant questions at the EUO, as required by the provisions of the applicable insurance policies, constitutes a material breach of contract, and precludes recovery [of benefits] by defendant" (*Country-Wide Ins. Co. v Gotham Med., P.C.*, 50 Misc 3d 712, 716 [Sup Ct, N.Y. County 2015]; see generally *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559, 560 [1st Dept 2011]; *Levy v Chubb Ins.*, 240 AD2d 336, 337 [1st Dept 1997]).

The plaintiff has thus established its entitlement to a default judgment against the claimant defendants and nonanswering medical defendants.

Accordingly, it is

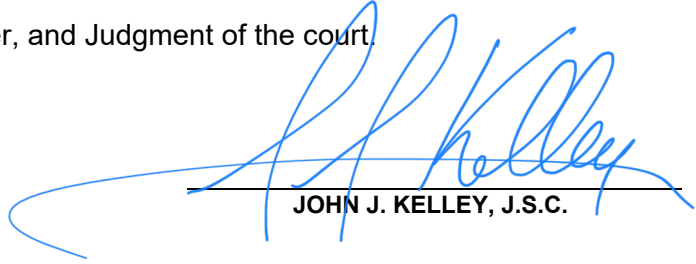
ORDERED that the plaintiff's motion for leave to enter a default judgment against the defendants Ginger Sams, Vicky James, Accelerated Surgical Center, P.C., Advanced Comprehensive Laboratory, Aleman Chiropractic Services, P.C., Crosstown Medical, P.C., Dahu Acupuncture, P.C., DM Chiropractic, P.C., Dos Manos Chiropractic, P.C., Harbor Medical Group, P.C., Hamid Lalani, M.D., Medalliance Medical Health Services, Inc., Mill Medical, P.C., David Minozzi, P.C., NBC Health Physical Therapy, P.C., Northern Bronx Physical Therapy, P.C., Rapid Imaging Corp., Ridgewood Diagnostic Laboratory, LLC, Riverside Medical Services, P.C., CMA Psychology, P.C., and Accelerated Surgical Center of North Jersey, LLC is granted, without opposition; and it is further,

ADJUDGED and DECLARED that the plaintiff, State Farm Fire and Casualty Company, is not obligated to pay no-fault benefits to the to the defendants Ginger Sams and Vicky James in connection with injuries that they allegedly sustained in a motor vehicle accident on January 22, 2019, or to reimburse the defendants Ginger Sams and Vicky James, or the defendants Accelerated Surgical Center, P.C., Advanced Comprehensive Laboratory, Aleman Chiropractic Services, P.C., Crosstown Medical, P.C., Dahu Acupuncture, P.C., DM Chiropractic, P.C., Dos Manos Chiropractic, P.C., Harbor Medical Group, P.C., Hamid Lalani, M.D., Medalliance Medical Health Services, Inc., Mill Medical, P.C., David Minozzi, P.C., NBC Health Physical Therapy, P.C., Northern Bronx Physical Therapy, P.C., Rapid Imaging Corp., Ridgewood Diagnostic Laboratory, LLC, Riverside Medical Services, P.C., CMA Psychology, P.C., and Accelerated Surgical Center of North Jersey, LLC, for treatment they rendered or equipment and supplies they provided to Ginger Sams and Vicky James for those injuries; and it is further,

ORDERED that the action is severed against the defendant Longevity Supply, Inc., and the action shall proceed against that defendant under Index No. 158090/2019.

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

5/5/2020
DATE


JOHN J. KELLEY, J.S.C.

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