

Liberty Mut. Ins. Co. v McDonald
2020 NY Slip Op 31445(U)
May 5, 2020
Supreme Court, New York County
Docket Number: 654595/2019
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE **PART 15**
Justice

LIBERTY MUTUAL INSURANCE COMPANY
and LIBERTY MUTUAL FIRE INSURANCE

- v -

INDEX NO. 654595/2019
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

NATALIE MCDONALD and GLEN SUMPTER and
ALIA WILLIAMS
("Individual Defendants")

And

ALLSTATE CHIROPRACTIC, P.C., ANNA BOTROS, PT, FRANK SAUCHELLI, MD,
HARMONIZED ACUPUNCTURE, P.C., MCDONALD AVE CHIROPRACTIC, P.C., METRO PAIN
SPECIALISTS PROFESSIONAL CORPORATION, STAND UP MRI OF BROOKLYN, P.C., SV
ACUPUNCTURE, P.C., VALERIY SABODASH, M.D., WALLEGOOD INC., ALL COUNTY, LLC,
BROWNSVILLE CHIROPRACTIC, P.C., COMFORT PHYSICAL THERAPY, PLLC,
CONTEMPORARY ORTHOPEDICS, PLLC, DYAMIC MEDICAL IMAGING, P.C., ENS
MEDICAL, P.C., GORDON C. DAVIS, MEDICAL, P.C., LONGEVITY MEDICAL SUPPLY, INC.,
NJMHMC, LLC, PREMIER ANESTHESIA ASSOCIATES PA, MYRTLE AVENUE TRADING,
LLC, MYRTLE DME NYC, INC., YAN Z CHIROPRACTIC, P.C., REHAB CARE PHYSICAL
THERAPY, P.C., ROLAND CHIROPRACTIC, PC, SATYA DRUG CORP., SEN LONG
ACUPUNCTURE CARE, P.C., SMART CHOICE MEDICAL, P.C., ST. MARY FAMILY PHYSICAL
THERAPY, P.C., WELLMART RX, INC
("Medical Provider Defendants")

The following papers, numbered _ to _ were read on this motion to/for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ... _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is

This case arises from an automobile accident that occurred on May 21, 2018, involving
defendants Natalie McDonald ("McDonald"), Glen Sumpter ("Sumpter), and Alia Williams
("Williams") ("individual defendants"). Plaintiff issued a policy to The Estate of Bernard Williams,
listing Alia Williams as the operator. Williams, the driver of the insured vehicle, and McDonald and

Sumpter, passengers in Williams vehicle, sustained bodily injuries as the result the May 21, 2018 collision. Individual defendants submitted claims to plaintiff, Liberty Mutual Insurance Company (“Liberty Mutual”) for no-fault benefits under the insurance policy that plaintiff issued to the insured. The individual defendants assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiff commenced an action on or about August 13, 2019, by a Summons and Complaint, seeking a declaratory judgment against claimant as well as numerous co-defendants/medical providers under Liberty Mutual policy number A0222835542970.

First, plaintiff withdrew its motion as to MYRTLE AVENUE TRADING, LLC. The default motion therefore does not apply to defendant MYRTLE AVENUE TRADING, LLC.

Plaintiff now moves for a default judgment pursuant to CPLR 3215 against the non-answering defendants, ALLSTATE CHIROPRACTIC, P.C., ANNA BOTROS, PT, FRANK SAUCHELLI, MD, HARMONIZED ACUPUNCTURE, P.C., MCDONALD AVE CHIROPRACTIC, P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, STAND UP MRI OF BROOKLYN, P.C., SV ACUPUNCTURE, P.C., VALERIY SABODASH, M.D., WALLEGOOD INC., ALL COUNTY, LLC, BROWNSVILLE CHIROPRACTIC, P.C., COMFORT PHYSICAL THERAPY, PLLC, CONTEMPORARY ORTHOPEDICS, PLLC, DYAMIC MEDICAL IMAGING, P.C., ENS MEDICAL, P.C., GORDON C. DAVIS, MEDICAL, P.C., LONGEVITY MEDICAL SUPPLY, INC., NJMHMC, LLC, PREMIER ANESTHESIA ASSOCIATES PA, MYRTLE DME NYC, INC., YAN Z CHIROPRACTIC, P.C., REHAB CARE PHYSICAL THERAPY, P.C., ROLAND CHIROPRACTIC, PC, SATYA DRUG CORP., SEN LONG ACUPUNCTURE CARE, P.C., SMART CHOICE MEDICAL, P.C., ST. MARY FAMILY PHYSICAL THERAPY, P.C., WELLMART RX, INC (hereinafter, the “nonanswering defendants”).

Plaintiff also moves for default against the following answering defendants: WELLMART RX, INC., ENS MEDICAL, P.C., SATYA DRUG CORP., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, VALERIY SABODASH, M.D., LONGEVITY MEDICAL SUPPLY, INC.,

ROLAND CHIROPRACTIC, P.C., (hereinafter, the “answering defendants”). Plaintiff rejects the answers as untimely. Plaintiff served ENS MEDICAL, P.C., on August 28, 2019, and on October 2, 2019, defendant filed its late answer. Plaintiff served SATYA DRUG CORP., on August 28, 2019, and on October 16, 2019, defendant filed its late answer. Plaintiff served METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, VALERIY SABODASH, M.D., LONGEVITY MEDICAL SUPPLY, INC., and ROLAND CHIROPRACTIC, P.C., on August 28, 2019 and September 4, 2019, and on November 7, 2019, defendant filed its late answer.

In this case, plaintiff fails make out its prima facie case that the no-fault claims were based on a staged accident. Plaintiff argues that the circumstances surrounding the accident indicate no-fault fraud, “where a person gets into an accident with two or more unacquainted people and each person seeks significant treatment for injuries allegedly sustained in the accident” (*see Dunleavy Aff*, dated November 21, 2019, ¶ 36). However, plaintiff merely provides the individual defendants’ EUO testimony, with no explanation as to why plaintiff suspects fraud. Dawn Smith, claims department team manager heading the special investigations unit liaison team, in her affidavit, alludes to the high amount of billing for a minor accident and “suspicious loss” that lead to an investigation (*see Smith Aff*, dated October 6, 2019, ¶ 2). However, Ms. Smith never actually states concrete facts that would suggest a “suspicious loss.” Smith doesn’t talk about what steps plaintiff took in its investigation to conclude that a staged accident occurred. In fact, from the EUO testimony, it seems that Williams, McDonald, and Sumpter were not “unacquainted people” as plaintiff alleges, but all connected through Williams. McDonald and Williams are neighborhood friends. Williams and Sumpter knew each other through a mutual friend and, on the night of the accident, Sumpter was flirting with Williams after coming back from a party. The testimony all revolved around the same facts and timeline. Therefore, plaintiff fails to establish that the accident was staged. Accordingly, the court denies the default motion.

Further, the court grants defendants’ METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, VALERIY SABODASH, M.D., LONGEVITY MEDICAL SUPPLY, INC., and

ROLAND CHIROPRACTIC, P.C., cross-motion for an order to (1) vacate their default, and (2) grant defendants an extension of time to appear and plead. Here, the delay in answering was relatively short and plaintiff has not shown prejudice.

Accordingly, it is

ORDERED that plaintiff's motion for default judgment is denied in its entirety; and it is further

ORDERED that the court grants defendants METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, VALERIY SABODASH, M.D., LONGEVITY MEDICAL SUPPLY, INC., and ROLAND CHIROPRACTIC, P.C., cross-motion; and it is further

ORDERED that defendants' METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, VALERIY SABODASH, M.D., LONGEVITY MEDICAL SUPPLY, INC., and ROLAND CHIROPRACTIC, P.C. answer is deemed served nunc pro tunc; and it is further

ORDERED that the parties are directed to contact the court at mlivings@nycourts.gov to schedule a phone status conference. Please note that the parties should include all sides on the email, as the court does not accept ex parte communications.

DATED: 5/5, 2020
New York, New York

ENTER:


MELISSA A. CRANE, J.S.C

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER
FIDUCIARY APPOINTMENT

