

State Farm Mut. Auto. Ins. Co. v Heal-Rite PT, PC
2020 NY Slip Op 32913(U)
September 4, 2020
Supreme Court, New York County
Docket Number: 157056/2019
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ

PART

IAS MOTION 47EFM

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,

Plaintiff,

- v -

HEAL-RITE PT, PC, ET AL.,

Defendants.

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INDEX NO. 157056/2019

MOTION DATE

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36-53, 56-68
were read on this motion to/for DEFAULT JUDGMENT.

In this action, plaintiff State Farm Mutual Automobile Insurance Company seeks a declaration that it has no obligation to pay no-fault claims arising out of a January 24, 2019 automobile accident and seeks a permanent stay of all arbitrations and/or lawsuits by defendants relating to such claims. Plaintiff now moves pursuant to CPLR 3215 for a default judgment against defendants HEAL-RITE PT, P.C., LONGEVITY MEDICALSUPPLY, INC., MYOCARE PT, P.C., CLASSIC MEDICAL DIAGNOSTIC REHAB, P.C., DAVID ISRAEL, M.D., NEW MILLENNIUM MEDICAL IMAGING, P.C., RIGHTWAY PHARMACY, INC., RED OAK SUMMONS MEDICAL, P.C., AAA MEDICAL DME INC. a/k/a AAA MEDICAL, AHA ACUPUNCTURE, P.C., BEST HANDS-ON PHYSICAL THERAPY, P.C., DE SOUSA CHIROPRACTIC, P.C., DYNAMIC MEDICAL IMAGING, P.C., RED CORE PT/PTA AND REHABILITATION, PLLC, SUNNY ACUPUNCTURE, P.C. SUNNY ACUPUNCTURE, P.C., WELLNESSPHYSICAL THERAPY, P.C., BROWNSVILLE CHIROPRACTIC P.C., CITIMEDICAL I, PLLC, M & D ELITE PHARMACY, LLC, METROPOLITAN MEDICAL & SURGICAL, P.C., MILL MEDICAL, P.C., NYC MADISON AVENUE MEDICAL, P.C.,

ALFORD A. SMITH M.D., P.C., SHERMAN-ABRAMS LABORATORY, INC., BACK PAIN CHIROPRACTIC, P.C., KATAEVA ACCESS PT, P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, NORTHERN MEDICAL CARE, P.C., and FELECIA FELDER. Plaintiff also moves pursuant to CPLR 306-b to extend the time to serve defendant RASHAWN SHAMAR BROWN. Defendants LONGEVITY MEDICAL SUPPLY, INC., MICHELE A. GLISPY, L.A.C., CITIMEDICAL I PLLC, NYC MADISON AVENUE MEDICAL P.C., ALFORD A. SMITH M.D., P.C., AND METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION cross-move for an order pursuant to CPLR 5015(a)(1) vacating their default and pursuant to CPLR 3012(d) extending defendants' time to answer the complaint.

Plaintiff has demonstrated its entitlement to a default judgment by submitting proof of service, proof of the facts constituting its claims through its affidavits and exhibits, and proof of defendants' default. CPLR 3215; *Nouveau Elevator Ind. v. Tracey Towers Hous.*, 95 A.D.3d 616 (1st Dep't 2012). Further, defendants' cross-motion to vacate their default must be denied as they have failed to offer proof of a reasonable excuse for a default. In support, defendants rely on the affirmation of their counsel, Oleg Rybak, who states that because the service was effectuated through the Secretary of State, the defendants did not timely receive the summons and complaint in this action. However, the affirmation is insufficient as it was made by someone without personal knowledge of the facts and, in any event, the defendants' purported excuse is insufficient. *See NYCTL 2015-A Trust v. Dikko Properties Corp.*, 171 A.D.3d 538, 539 (1st Dep't 2019). Finally, in light of plaintiff's efforts to serve defendant RASHAWN SHAMAR BROWN, the absence of any prejudice to defendants, and in the interest of justice, plaintiff's motion to

extend its time to serve this defendant must be granted. *Pennington v. Da Nico Restaurant*, 123 A.D.3d 627 (1st Dep't 2014). Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted and the cross-motion is denied; and it is further

ORDERED, ADJUDGED and DELCARED that plaintiff STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY owes no duty to pay any no-fault claims of defendants HEAL-RITE PT, P.C., LONGEVITY MEDICALSUPPLY, INC., MYOCARE PT, P.C., CLASSIC MEDICAL DIAGNOSTIC REHAB, P.C., DAVID ISRAEL, M.D., NEW MILLENNIUM MEDICAL IMAGING, P.C., RIGHTWAY PHARMACY, INC., RED OAK SUMMONS MEDICAL, P.C., AAA MEDICAL DME INC. a/k/a AAA MEDICAL, AHA ACUPUNCTURE, P.C., BEST HANDS-ON PHYSICAL THERAPY, P.C., DE SOUSA CHIROPRACTIC, P.C., DYNAMIC MEDICAL IMAGING, P.C., RED CORE PT/PTA AND REHABILITATION, PLLC, SUNNY ACUPUNCTURE, P.C. SUNNY ACUPUNCTURE, P.C., WELLNESSPHYSICAL THERAPY, P.C., BROWNSVILLE CHIROPRACTIC P.C., CITIMEDICAL I, PLLC, M & D ELITE PHARMACY, LLC, METROPOLITAN MEDICAL & SURGICAL, P.C., MILL MEDICAL, P.C., NYC MADISON AVENUE MEDICAL, P.C., ALFORD A. SMITH M.D., P.C., SHERMAN-ABRAMS LABORATORY, INC., BACK PAIN CHIROPRACTIC, P.C., KATAEVA ACCESS PT, P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, NORTHERN MEDICAL CARE, P.C., and FELECIA FELDER; and it is further

ORDERED that all no-fault lawsuits and arbitrations brought by the defaulting defendants are permanently stayed; and it is further

ORDERED that the causes of action against the remaining defendants are hereby severed and continued; and it is further

ORDERED plaintiff shall have 60 days from the date of entry of this order to serve defendant RASHAWN SHAMAR BROWN.

9/4/20

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE



PAUL A. GOETZ, J.S.C.