

Liberty Mut. Ins. Co. v Yan Xin Lin

2020 NY Slip Op 33731(U)

November 9, 2020

Supreme Court, New York County

Docket Number: 657376/2019

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON **PART** **IAS MOTION 37EFM**

Justice

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LIBERTY MLTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 657376/2019

MOTION DATE 10/20/2020

MOTION SEQ. NO. 001

- v -

YAN XIN LIN, ADVANCED MEDICAL CONCEPTS
PC, CHIROPRACTIC EXAM WORKS PC, CHIROPRACTIC
SPINE CARE PC, ISURPLY LLC, JUNGWON
ACUPUNCTURE PC, NYC ORTHOPEDIC AND SPINE
PC, RADCITI IMAGING PC, ST MICHAEL PHYSICAL
THERAPY PC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiffs' instant motion for a declaratory judgment on default is hereby granted in part, on default and on the merits, and denied in part, solely as moot, for the reasons stated hereinbelow.

Background

On September 11, 2018, the claimant-defendant, Yan Xin Lin, was allegedly operating a vehicle and collided with another vehicle. Plaintiffs, Liberty Mutual Insurance Company ("Liberty Mutual") and LM General Insurance Company, insured the claimant-defendant's subject vehicle. The claimant-defendant allegedly sought medical treatment for alleged injuries arising out of the subject alleged accident from the medical provider defendants, Advanced Medical Concepts PC; Chiropractic Exam Works PC; Chiropractic Spine Care PC; Isurply LLC; Jungwon Acupuncture PC; NYC Orthopedic and Spine PC; Radciti Imaging PC; and St Michael Physical Therapy PC. The medical provider defendants, in their capacities as the claimant-defendant's assignees under plaintiffs' subject insurance policy, then submitted claims, totaling approximately \$27,000.00, to plaintiffs for medical treatment that they allegedly provided to the claimant-defendant for injuries allegedly arising out of the subject alleged accident. (NYSCEF Doc. 1).

According to plaintiffs, testimony that the claimant-defendant gave at his March 18, 2019 Examination Under Oath ("EUO") apparently revealed that the subject vehicle was not garaged at the policy address in Poughkeepsie, New York and that the claimant-defendant apparently resided in and garaged the subject vehicle in Corona, New York. Plaintiffs commenced an investigation to verify the claimant-defendant's address after the medical provider defendants

submitted bills to plaintiffs for medical services that they allegedly provided to the claimant-defendant arising out of the subject alleged accident. Plaintiffs allege that the claimant-defendant misrepresented his residence to receive a lower insurance rate with plaintiffs. “Based on” the claimant-defendant’s subject EUO testimony, on May 29, 2019, plaintiffs conducted an EUO of the claimant-defendant’s wife, Feng Ying Chen, who claimed to have memory problems due to high blood pressure, to have last lived at the subject Poughkeepsie address in April 2019 for one week, and not to have documentary proof that she lives at the subject policy address in Poughkeepsie. (NYSCEF Doc. 1).

Plaintiff asserts that “it is well settled law that material misrepresentation made at the time an insurance policy is procured may lead to a policy being rescinded and/or avoided. See Syncora Guarantee Inc. v Countrywide Home Loans Inc., 935 NYS2d 858 (NY Sup, 2012); Carpinone v Mutual of Omaha Ins. Co., 697 NYS2d 381 (App Div 3rd Dep’t 1999)” (NYSCEF Doc. 1, at 9). Additionally, plaintiff quotes from AA Acupuncture Service, P.C. v Safeco Ins. Co. of America, 887 NYS2d 739 (NY Sup 2009), in which the court addressed an insured party whose misrepresentation of his place of residence and the location in which the insured vehicle would be garaged was “precluding recovery of benefits, regardless of whether policy had actually been cancelled” (NYSCEF Doc. 1, at 9).

On November 27, 2019, plaintiffs commenced the instant action against the claimant-defendant and the medical provider defendants, seeking a judgment declaring that (1) plaintiff Liberty Mutual has no duty to provide coverage or pay claims for No-Fault benefits that the claimant-defendant and/or the medical provider defendants, in their capacities as the claimant-defendant’s assignees under the subject insurance policy, submit to plaintiffs and, thus, plaintiff Liberty Mutual is entitled to a permanent injunction and, ultimately, dismissal of all pending litigation and arbitration arising out of the subject No-Fault billing submitted under the fraudulently-obtained policy; (2) plaintiff Liberty Mutual is entitled to a stay and, ultimately, dismissal of all pending litigation and arbitrations arising out of the subject No-Fault billing submitted under the fraudulently-obtained policy; (3) the medical provider defendants are barred from submitting any new bills to plaintiffs arising out of the claimant-defendant’s subject alleged accident and are barred from commencing any new litigation or arbitration for any previously submitted bills that were denied; and (4) plaintiff Liberty Mutual properly issued the subject denial of the claimant-defendant’s subject bills. (NYSCEF Doc. 1, at 13-14).

Plaintiffs now move, pursuant to CPLR 3215, for a declaratory judgment on default as against the claimant-defendant and the medical provider defendants; (1) declaring and permanently staying each and every part of any arbitration or court hearing that defendants brought for No-Fault benefits arising out of the alleged September 11, 2018 accident; (2) declaring and granting a permanent injunction barring any arbitration or court hearing that defendants brought for No-Fault benefits arising out of the alleged September 11, 2018 accident from continuing or being commenced; and (3) declaring that plaintiffs’ denials of all of defendants’ claims for No-Fault benefits arising out of the subject alleged accidents were valid (NYSCEF Doc. 3).

Pursuant to an October 16, 2020 stipulation, plaintiff discontinued the instant action as against medical provider defendant Radciti Imaging PC, only (NYSCEF Doc. 20).

Discussion

Plaintiffs have established that they are entitled to a declaratory judgment on default as against the claimant-defendant and all medical provider defendants except for Radciti Imaging PC pursuant to the October 16, 2020 stipulation of discontinuance as against that medical provider defendant, only, by complying with CPLR 3215(f) by submitting, inter alia, the following: copies of the subject pleadings; copies of the subject affidavits of service; the September 15, 2020 affidavit of Cheryl Danzy, plaintiff's process server, stating that plaintiffs served defendants with the CPLR 3215(g) notice on January 17, 2020; and the September 15, 2020 affirmation of Michelle Dunleavy, Esq., plaintiffs' attorney.

To date, the claimant-defendant and all medical provider defendants have failed to answer the instant complaint and/or oppose or otherwise respond to the instant motion, and their time to do so has expired. Thus, plaintiffs are entitled to a declaratory judgment on default as against the claimant-defendant and all medical provider defendants except for Radciti Imaging PC pursuant to the October 16, 2020 stipulation of discontinuance as against that medical provider defendant, only.

Conclusion

Thus, for the reasons stated herein, the instant motion, pursuant to CPLR 3215, of plaintiffs, Liberty Mutual Insurance Company and LM General Insurance Company, for a declaratory judgment on default is hereby granted in part, on default and on the merits, as against the claimant-defendant, Yan Xin Lin, and medical provider defendants Advanced Medical Concepts PC; Chiropractic Exam Works PC; Chiropractic Spine Care PC; Isurply LLC; Jungwon Acupuncture PC; NYC Orthopedic and Spine PC; and St Michael Physical Therapy PC and is hereby denied, solely as moot, as against medical provider defendant Radciti Imaging PC pursuant to the October 16, 2020 stipulation of discontinuance as against that medical provider defendant, only.

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring and permanently staying each and every part of any arbitration or court hearing that any defendant except for medical provider defendant Radciti Imaging PC brought for No-Fault benefits arising out of the alleged September 11, 2018 accident; (2) declaring and granting a permanent injunction barring any arbitration or court hearing that any defendant except for medical provider defendant Radciti Imaging PC brought PC for No-Fault benefits arising out of the alleged September 11, 2018 accident from continuing or being commenced; (3) declaring that plaintiffs' denials of claims for No-Fault benefits arising out of the subject alleged accident were valid; (4) declaring that plaintiff Liberty Mutual has no duty to provide coverage or pay claims for No-Fault benefits that the claimant-defendant and/or the medical provider defendants, except for medical provider defendant Radciti Imaging PC, in their capacities as the claimant-defendant's assignees under the subject insurance policy, submit to plaintiffs and, thus, plaintiff Liberty Mutual is entitled to a permanent injunction and, ultimately, dismissal of all pending litigation and arbitration arising out of the subject No-Fault billing submitted under the fraudulently-obtained policy; (5) declaring that plaintiff Liberty Mutual is entitled to a stay and, ultimately, dismissal of all pending litigation and arbitrations arising out of the subject the No-Fault billing submitted under the fraudulently-obtained policy; (6) barring the medical provider defendants except for medical provider defendant Radciti Imaging PC from submitting any new bills to plaintiffs arising out of

the claimant-defendant's subject alleged accident and are barred from commencing any new litigation or arbitration for any previously submitted bills that were denied; (7) declaring that plaintiff Liberty Mutual properly issued the subject denial of the claimant-defendant's subject bills; and (8) awarding costs and disbursements to plaintiffs.

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11/9/2020

DATE

ARTHUR F. ENGORON, 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