

**State Farm Fire & Cas. Co. v Accelerated Surgical  
Ctr. of N. Jersey, L.L.C.**

2020 NY Slip Op 34153(U)

December 16, 2020

Supreme Court, New York County

Docket Number: 150108/2020

Judge: Carol Ruth Feinman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 28EFM

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STATE FARM FIRE AND CASUALTY COMPANY,  
  
Plaintiff,

INDEX NO. 150108/2020  
  
MOTION DATE N/A  
  
MOTION SEQ. NO. 001

- v -

ACCELERATED SURGICAL CENTER OF NORTH  
JERSEY, L.L.C., ACCU REFERENCE MEDICAL LAB,  
L.L.C., ALEXIA'S PHARMACY, INC., ALL BEST TRADING,  
INC., AMSC, L.L.C., BURKE PHYSICAL THERAPY,  
P.C., CAREWELL PHYSICAL THERAPY, P.C., CENTER  
FOR NEURORESTORATIVE MEDICINE, L.L.C.,  
CITIMEDICAL I, PLLC, COLUMBUS IMAGING CENTER,  
L.L.C., COMPREHENSIVE MEDICAL ASSIST,  
P.C., COUNTY LINE PHARMACY, L.L.C., CVS  
PHARMACY, INC., CVS RX, INC., DANIMARK PHYSICAL  
THERAPY, P.C., DAVID ISRAEL, M.D., ALBERT  
GRAZIOSA M.D., P.C., BRONX SC, L.L.C., JULY  
GAYSYNSKY, M.D., G.M. WELLNESS MEDICAL,  
P.C., HAPPY APPLE MEDICAL SERVICES,  
P.C., HEALTHPLUS SURGERY CENTER, L.L.C., THE  
HUDSON REGIONAL HOSPITAL FOUNDATION, INC., JK  
SPINE HEALTH CHIROPRACTIC, P.C., LLOYD  
PSYCHOLOGICAL SERVICES, P.L.L.C., NYC MADISON  
MEDICAL, P.C., M&D ELITE PHARMACY, L.L.C., MDJ  
CHIROPRACTIC WELLNESS, P.C., MODERN  
CHIROPRACTIC SOLUTIONS, L.L.C., MODERN  
SERVICES PAIN MANAGEMENT, P.C., MOONLIGHT  
ACUPUNCTURE, P.C., NORTHERN OASIS  
ACUPUNCTURE, P.C., PREMIER ANESTHESIA  
ASSOCIATES, P.A., PROTECHMED, INC., QBS  
SOLUTIONS, INC., QUALITY MEDICAL SURGICAL  
SUPPLIES, L.L.C., REHAB CARE PHYSICAL THERAPY,  
P.C., RIDGEWOOD DIAGNOSTIC LABORATORY, L.L.C.,  
ARON ROVNER M.D., P.L.L.C., SC CHIROPRACTIC  
CARE, P.C., SEDATION VACATION PERIOPERATIVE  
MEDICINE, P.L.L.C., SHERMAN-ABRAMS  
LABORATORY, INC., SYNERGY CHIROPRACTIC, L.L.C.,  
TRI-STATE MULTI-SPECIALTY MEDICAL SERVICES,  
P.C., UNICAST, INC., WESTCHESTER RADIOLOGY &  
IMAGING, P.C., YBD UNIVERSAL CORP., YOU FIRST  
PHARMACY, INC., JERRY TORAIN, MOHAMED NAGI,  
MONASIA HENLEY, BRIANA BAUTISTA, ROBERT  
BROWN

**DECISION + ORDER ON  
MOTION**

Defendant.

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HON. CAROL RUTH FEINMAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is hereby decided as follows:

This civil action was brought by plaintiff to seek a declaratory judgment against all defendants herein except for County Line Pharmacy, LLC, NYC Madison Medical, PC, ProTechMed, Inc., Unicast, Inc., All Best Trading, Inc., You First Pharmacy, Inc., YBD Universal Corp, Quality Medical Surgical Supplies, LLC, and Robert Brown. Plaintiff asserts that, based upon defendants Monasia Henley, Briana Bautista and Robert Brown (collectively the "Claimants"), as well as the insured Mohammed Nagi ("Insured") violating the no-fault regulations, to wit: the Claimants were involved in an intentionally caused collision and thus the Claimants' injuries did not arise from an insured incident, and the Claimants breached a condition precedent to coverage by failing to appear for a scheduled examination under oath ("EUO"), the Insured's inaccurate address in the insurance policy making material misrepresentations regarding his/her the primary garage location of the insured vehicle under the policy which was procured, the Claimants' inaccuracies and contradictions in their EUOs, and that the collision did not occur as the Claimants alleged, plaintiff is not required to provide no fault insurance coverage benefits and no duty to indemnify or defend for the alleged claims under claim #32-4882-P45, relating to the collision involving Claimants that occurred on July 12, 2018. Plaintiff asserts that the incident is a non-covered event under the no-fault regulations. The court notes that the defendants who have filed an Answer herein deny such claims.

Plaintiff seeks an order herein granting a default judgment against the defaulting defendants herein, due to their failure to appear in the instant action, and declaring that plaintiff is not required to provide no-fault insurance coverage benefits to the defaulting defendants. Plaintiff also seeks an extension of time to serve defendant Quality Medical Surgical Supplies, LLC. There is no opposition submitted by any of the defaulting defendants herein.

Courts have the power to use their discretion in deciding to enter a default judgment. The law and public policy favor resolving disputes on their merits, and toward that end a liberal policy has been adopted with respect to opening default judgments in furtherance of justice so that parties may have their day in court. *See for Example, Picnic v Seatrain Lines, Inc.*, 117 AD2d 504 [1<sup>st</sup> Dept 1986]; *see also, Bishop v Galasso*, 67 AD2d 753 [3<sup>rd</sup> Dept 1979]; *Cappel v RKO Stanley Warner Theaters*, 61 AD2d 936 [1<sup>st</sup> Dept 1978]; *Capellino Abattoir, Inc. v Lieberman*, 59 AD2d 986 [3<sup>rd</sup> Dept 1977].

It is well-established that a party is entitled to a default judgment pursuant to CPLR 3215 upon submitting proof of proper service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing. *See for example, 154 E. 62 LLC v. 156 E. 62nd St. LLC*, 159 AD3d 498 [1<sup>st</sup> Dept 2018]; *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1<sup>st</sup> Dept 2016].

To satisfy the requirement of CPLR 3215(f), a party seeking to enter a default judgment must only submit some firsthand confirmation of the facts. The standard of proof to establish entitlement to a default judgment amounts only to some firsthand confirmation of the facts. Plaintiff, by reason of defendant's failure to answer, does not have the benefit of discovery, thus the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists. *See, Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, [2003]; *see also for example, St. Paul Fire & Mar Ins. Co. v A.L. Eastmond & Sons*, 233 AD2d 294 [1<sup>st</sup> Sept 1997]. *See also, Natl. Union Fire Ins. Co. of Pitt. v Sullivan*, 269 AD2d 149 [1<sup>st</sup> Dept 2000]; *Figueroa, et al v Relgold LLC*, 178 AD3d 425 [1<sup>st</sup> Dept 2019].

An insurer may disclaim all insurance coverage based upon the fact or founded belief that the alleged injury does not arise out of an insured incident. *See for example, Central Gen. Hosp. v. Chubb Grp. of Ins. Co.*, 90 NY2d 195, [1997]. The No-Fault insurer must demonstrate the facts elicited during an investigation that make up the founded belief. 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. *See for example, Benzaken v. Verizon Communications, Inc.*, 21 AD3d 864 [2d Dept 2005].

To avoid the entry of a default judgment, the defaulting party is required to demonstrate a reasonable excuse for its default and a potentially meritorious defense to the action. *See, Allstate Ins. Co v Austin*, 48 AD 3d 720 [2nd Dept 2008].

CPLR 306-b provides, as relevant: "Service of the summons and complaint, summons with notice, . . . shall be made within one hundred twenty days after the filing of the summons and complaint, summons with notice . . . . If service is not made upon a defendant within the time period provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service."

CPLR 306-b authorizes an extension of time for service in two discrete situations: "upon good cause shown" or "in the interest of justice" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104-106 [2001]). The Court of Appeals has confirmed that the "good cause" and "interest of justice" prongs of the section constitute separate grounds for extensions, to be defined by separate criteria (*id.* at 104). The Court stated, "Our analysis is buttressed by an examination of the legislative history behind the amendment [to CPLR 306-b]. A "good cause" extension requires a showing of reasonable diligence in attempting to effect service upon a defendant.

Even if this case does not qualify for an extension under the "good cause" exception (*see Mead v Singleman*, 24 AD3d 1142, 1144 [2005]), we find that it qualifies under the "interest of justice" category. Under this prong of CPLR 306-b, the Court of Appeals has instructed that a court "may consider [plaintiff's] diligence, or lack thereof, along with any other relevant factor . . . , including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant" (*Leader*, 97 NY2d at 105-106).

After a review of relevant statutory and case law, as well as the papers submitted in support of this application, including, inter alia, the Summons and Complaint, the Affidavits of Service of the Summons and Complaint, and an Affirmation that defendants were served notice of the instant Notice of Motion and accompanying exhibits, and sufficient Affidavit facts constituting plaintiff's claim herein, the court finds that plaintiff has satisfied the statutory requirements to warrant consideration of a default judgment pursuant to CPLR §3215 as well as consideration of an extension of time to serve. The defaulting defendants have not appeared in the instant action, have not opposed the instant motion, and have neither provided a reasonable excuse for default, nor a meritorious defense.

Therefore, based upon the foregoing, the plaintiff's application for a default judgment is granted against the defaulting defendants, except for County Line Pharmacy, LLC, NYC Madison Medical, PC, ProTechMed, Inc., Unicast, Inc., All Best Trading, Inc., You First Pharmacy, Inc., YBD Universal Corp, Quality Medical Surgical Supplies, LLC, and Robert Brown.

In addition, the plaintiff's application for an extension of time to serve defendant Quality Medical Surgical Supplies, LLC and Robert Brown is also hereby granted.

Thus, it is hereby

ORDERED that Plaintiff's Motion for Default Judgment against the various defaulting defendants pursuant to C.P.L.R. §3215 is granted without opposition submitted, except for County Line Pharmacy, LLC, NYC Madison Medical, PC, ProTechMed, Inc., Unicast, Inc., All Best Trading, Inc., You First Pharmacy, Inc., YBD Universal Corp, Quality Medical Surgical Supplies, LLC, and Robert Brown; and it is further

ORDERED that the Clerk of the Court is hereby directed to enter a default judgment against all defendants, except for County Line Pharmacy, LLC, NYC Madison Medical, PC, ProTechMed, Inc., Unicast, Inc., All Best Trading, Inc., You First Pharmacy, Inc., YBD Universal Corp, Quality Medical Surgical Supplies, LLC, and Robert Brown; and it is further

ORDERED and ADJUDGED that Defendant Insured Mohammed Nagi made a material misrepresentation of his/her residence in procuring the insurance policy, and it has not been contradicted or opposed herein, and it is further

ORDERED and ADJUDGED that, as to the defaulting defendants herein, the alleged injuries did not arise from an insured incident; and it is further

ORDERED and ADJUDGED that, as to the defaulting defendants herein, they breached a condition precedent to coverage by failing to appear for a scheduled examination under oath ("EUO") and it has not been contradicted or opposed herein; and it is further

ORDERED and ADJUDGED that, as to the defaulting defendants herein, the accident/loss was not an insured incident, and it has not been contradicted or opposed herein; and it is further

ORDERED and ADJUDGED that, as to the defaulting defendants herein, the policy would not have been issued, or would not have been issued under the same terms or at the same rate had plaintiff been aware of the true residence of the insured, and it has not been contradicted or opposed herein, and it is further

ORDERED and ADJUDGED that plaintiff is not required to pay no-fault insurance coverage benefits to the defaulting defendants herein, arising from the July 12, 2018 collision; and it is further

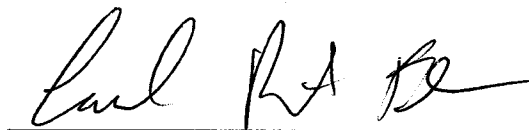
ORDERED and ADJUDGED that, as to the defaulting defendants herein, plaintiff is not required to defend nor indemnify the Insured or Claimant based upon the founded belief that such accident/loss was intentionally caused, arising from the July 12, 2018 collision; and it is further

ORDERED that Plaintiff's Motion seeking an extension of time to serve defendant Quality Medical Surgical Supplies, LLC, pursuant to C.P.L.R. §306-b is hereby granted to the extent that plaintiff is hereby directed to execute service within 120 days.

The forgoing constitutes the Decision and Order of the Court.

DATED: 12-16, 2020

New York, NY



Carol Ruth Feinman, AJSC

**HON. CAROL RUTH FEINMAN**  
J.S.C.