

Country-Wide Ins. Co. v Fernandez
2020 NY Slip Op 34513(U)
May 28, 2021
Supreme Court, New York County
Docket Number: 650253/2020
Judge: Debra A. James
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

File No.: 19CWI010761/000346111-001
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
COUNTRY-WIDE INSURANCE COMPANY

Index No.: 650253/2020

Plaintiff,

- against -

JUDGMENT

JOSHUA D. FERNANDEZ

("Eligible Injured Party Defendant"),

AND

NEW AGE MEDICAL, PC,
ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC,
WEI DAO ACUPUNCTURE, P.C.,
BROOKLYN MEDICAL PRACTICE, PC,
NORTH SHORE FAMILY CHIROPRACTIC, P.C.,
UNICORN ACUPUNCTURE, P.C.,
CORRECTALIGN CHIROPRACTIC, PC,
LINDEN WEST MEDICAL, PC,
GOOD SPACE ACUPUNCTURE, P.C.,
MONTEFIORE MEDICAL CENTER,
MMC FACULTY PRACTICE,
ADVANCED ROCKLAND CHIROPRACTIC OFFICES, P.C.,
GOLDEN HEALTH CARE CHIROPRACTIC,
MEDAID RADIOLOGY LLC,
PMK ACUPUNCTURE, PC,
ANI KALFAYAN, MD,
LUMAX, INC.,
WHITE TIGER PHYSICAL THERAPY, P.C.,
and MRK ACUPUNCTURE, P.C.

(" Medical Provider Defendants").

Defendant(s).

-----X

HON. DEBRA A. JAMES, J.S.C

This case arises from an automobile accident on July 28, 2019 where defendant JOSHUA D. FERNANDEZ was involved in a motor vehicle accident while allegedly in a vehicle insured

by plaintiff, Country-Wide Insurance Company ("Plaintiff"). Defendant made a claim to Plaintiff as a purported injured person under an insurance policy issued by Plaintiff (CS4111781 19).

Plaintiff commenced an action on or about January 13, 2020, by the filing of a Summons and Complaint seeking a declaratory judgment against JOSHUA D. FERNANDEZ , NEW AGE MEDICAL, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, WEI DAO ACUPUNCTURE, P.C., BROOKLYN MEDICAL PRACTICE, PC, NORTH SHORE FAMILY CHIROPRACTIC, P.C., UNICORN ACUPUNCTURE, P.C., CORRECTALIGN CHIROPRACTIC, PC, LINDEN WEST MEDICAL, PC, GOOD SPACE ACUPUNCTURE, P.C., MONTEFIORE MEDICAL CENTER, MMC FACULTY PRACTICE, ADVANCED ROCKLAND CHIROPRACTIC OFFICES, P.C., GOLDEN HEALTH CARE CHIROPRACTIC, MEDAID RADIOLOGY LLC, PMK ACUPUNCTURE, PC, ANI KALFAYAN, MD, LUMAX, INC., WHITE TIGER PHYSICAL THERAPY, P.C., and MRK ACUPUNCTURE, P.C., due to the alleged breach of contract by JOSHUA D. FERNANDEZ in failing to appear for a properly requested and scheduled Examination Under Oath. Plaintiff seeks a declaration that JOSHUA D. FERNANDEZ is not an eligible injured person entitled to no-fault benefits under the Policy, and that Plaintiff is not obligated to reimburse JOSHUA D. FERNANDEZ for alleged medical treatment, therapy and/or medical supplies rendered.

Plaintiff voluntarily discontinued this action against medical providers, ADVANCED ROCKLAND CHIROPRACTIC OFFICES, P.C., MONTEFIORE MEDICAL CENTER, MMC FACULTY PRACTICE, GOLDEN HEALTH CARE CHIROPRACTIC, MEDAID RADIOLOGY LLC, PMK ACUPUNCTURE, PC, ANI KALFAYAN, MD, LUMAX, INC, WHITE TIGER PHYSICAL THERAPY, P.C., and MRK ACUPUNCTURE, P.C. Notices detailing the discontinuances were filed with the court.

Plaintiff now moves for a default judgment pursuant to CPLR § 3215 against, JOSHUA D. FERNANDEZ, NEW AGE MEDICAL, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, WEI DAO ACUPUNCTURE, P.C., BROOKLYN MEDICAL PRACTICE, PC, NORTH SHORE FAMILY CHIROPRACTIC, P.C., UNICORN ACUPUNCTURE, P.C., CORRECTALIGN CHIROPRACTIC, PC, LINDEN WEST MEDICAL, PC, and GOOD SPACE ACUPUNCTURE, P.C. No opposition is submitted.

Plaintiff submits affidavits of service showing service upon JOSHUA D. FERNANDEZ on January 30, 2020 and the Medical Provider Defendants on February 3, 2020. Plaintiff submits the affidavit of Jessica Mena-Sibrian, who is employed as a No-fault litigation/Arbitration Supervisor and the affidavit of Annie Persaud, the EUO Clerk at Country-Wide Insurance Company, in support of Plaintiff's motion for default judgment.

WHEREFORE, it is hereby,

ORDERED that Plaintiff's motion for default judgment against, JOSHUA D. FERNANDEZ, NEW AGE MEDICAL, PC, ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, WEI DAO ACUPUNCTURE, P.C., BROOKLYN MEDICAL PRACTICE, PC, NORTH SHORE FAMILY CHIROPRACTIC, P.C., UNICORN ACUPUNCTURE, P.C., CORRECTALIGN CHIROPRACTIC, PC, LINDEN WEST MEDICAL, PC, and GOOD SPACE ACUPUNCTURE, P.C., is granted; and it is further,

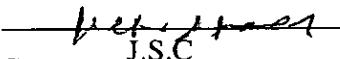
ORDERED and ADJUDGED that on the first cause of action Plaintiff owes no duty to Defendants, JOSHUA D. FERNANDEZ, NEW AGE MEDICAL, PC; ADVANCED ORTHOPEDICS AND JOINT PRESERVATION PC, WEI DAO ACUPUNCTURE, P.C., BROOKLYN MEDICAL PRACTICE, PC, NORTH SHORE FAMILY CHIROPRACTIC, P.C., UNICORN ACUPUNCTURE, P.C., CORRECTALIGN CHIROPRACTIC, PC, LINDEN WEST

MEDICAL, PC, and GOOD SPACE ACUPUNCTURE, P.C., to pay No-Fault claims submitted in relation to the July 28, 2019 loss, Claim No.: 000346111-001, Policy.: CS4111781 19, referenced in the complaint involving JOSHUA D. FERNANDEZ, and it is further,

ORDERED and ADJUDGED that on the second cause of action that all arbitrations, lawsuits and enforcement of awards or judgments in connection with the July 28, 2019 loss, Claim No.: 000346111-001, Policy.: CS4111781 19, referenced in the complaint involving JOSHUA D. FERNANDEZ are hereby permanently stayed.

This constitutes the decision and order of the court. The County Clerk is directed to enter Judgment accordingly.

Dated: MAY 28 2021


J.S.C.
DEBRA A. JAMES