

Country-Wide Ins. Co. v Shaw
2021 NY Slip Op 30207(U)
January 20, 2021
Supreme Court, New York County
Docket Number: 650645/2019
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63EFM

Justice

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

- v -

CLIFTON SHAW, BRONX MEDICAL DIAGNOSTIC P.C., DOV ANESTHESIOLOGY PLLC, ENZO CLINICAL LABS, INC., EXCEL EMERGENCY PHYSICIAN SERVICES OF HUDSON VALLEY, PLLC, HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C., JOANNA KUSHETSKY, PT, JOHN A. NASRINPAY, JULES FRANCOIS PARISIEN, M.D., KEYSTONE LABORATORIES INC., MONTEFIORE MOUNT VERNON HOSPITAL, NEW YORK CENTER FOR SPECIAL SURGERY, NORTHSIDE ACUPUNCTURE P.C., OPTIMUS PLUS PRODUCTS CORP, RELIABLE THERAPY SUPPLY, INC., SEO HAN MEDICAL, P.C., STRAIGHT UP CHIROPRACTIC P.C., SURGICARE OF BROOKLYN, URBAN MEDICAL, P.C.

Defendant.

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INDEX NO. 650645/2019
MOTION DATE 01/19/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is decided as follows:

This case arises from an automobile accident on July 23, 2017 where defendant Clifton Shaw, 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 as insurance policy issued by Plaintiff (PS 7610507 17.). Plaintiff commenced an action on or about February 1, 2019, by the filing of a Summons and Complaint seeking a declaratory judgment against Clifton Shaw and the medical providers named in the caption as assignees of Clifton Shaw based upon his failure to appear for a properly requested and scheduled Independent Medical Examinations.

Plaintiff seeks a declaration that by Clifton Shaw, is not an eligible injured person entitled to no-fault benefits under the Policy, and that Plaintiff is not obligated to reimburse his assignees, for alleged medical treatment, therapy and/or medical supplies rendered. In an Order entered November 19, 2019, plaintiff was granted a default judgment against Clifton Shaw, Bronx Medical Diagnostic, PC, Dov Anesthesiology, PLLC, Enzo Clinical Labs, Inc., Excel Emergency Physician Services of Hudson Valley, PLLC., Joanna Kushetsky PT, Keystone Laboratories, Inc. Montefiore Mount Vernon Hospital, New York Center For Special Surgery, Optimus Plus Products Corp., Reliable Therapy Supply, Inc., Surgicare of Brooklyn and Urban Medical, PC.

Plaintiff now moves for a summary judgment pursuant to CPLR § 3212 against, Haar Orthopaedics & Sports Medicine, PC, John A. Nasrinpay, Jules Francois Parisien, MD., Northside Acupuncture, PC, Seo Han Medical, PC and Straight Up Chiropractic, PC. In support of its motion, 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, and Anita Megnauth, a NF Administrative Assistant for Country-Wide Insurance Company in support of Plaintiff's motion for summary judgment, together with supporting documentation, which establish as follows: Between August 29, 2017 and September 23, 2017, plaintiff received numerous bills from the answering defendants for medical services provided to Clifton Shaw. On September 28, 2017, plaintiff requested that Mr. Shaw appear for an IME on October 12, 2017. Copies of the letter scheduling the IME were sent to Mr. Shaw at his home address and Mr. Shaw's attorney. Mr. Shaw failed to attend the scheduled IME. Upon being notified of the non-appearance at the IME, Plaintiff rescheduled the IME. On October 19, 2017 Country-Wide Management Services Medical Evaluation Unit issued its letter rescheduling the IME for November 2, 2017. Said letter was again sent to Mr. Shaw and his attorney. Mr. Shaw

failed to attend the rescheduled IME. Plaintiff was notified of the Eligible Injured Party Defendant's non-appearance at the scheduled IME, and therefore on November 3, 2017 plaintiff issued a general denial.

As discussed in *American Tr. Ins. Co. v. Longevity Med. Supply, Inc.*, 131 A.D.3d 841 (1st Dept. 2015) to prevail, plaintiff must establish that the notices of the scheduled IMEs were properly mailed, that the Eligible Injured Party did not appear and that the scheduling of the IMEs complied with Insurance Department Regulations (11 NYCRR) § 65-3.5(d), which prescribes a 30-calendar-day time frame for the holding of IMEs. As such, plaintiff has established a *prima facie* entitlement to summary judgment with respect to all claims received after September 12, 2017

WHEREFORE, it is hereby, ORDERED that Plaintiff's motion for summary judgment against HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C., JOHN A. NASRINPAY, JULES FRANCOIS PARISIEN, M.D., NORTHSIDE ACUPUNCTURE P.C., SEO HAN MEDICAL, P.C., STRAIGHT UP CHIROPRACTIC P.C. is granted to the extent below; and it is further,

ORDERED and ADJUDGED that on the first cause of action Plaintiff owes no duty to Defendants HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C., JOHN A. NASRINPAY, JULES FRANCOIS PARISIEN, M.D., NORTHSIDE ACUPUNCTURE P.C., SEO HAN MEDICAL, P.C., STRAIGHT UP CHIROPRACTIC P.C. to pay No-Fault claims submitted in relation to the July 23, 2017 loss, Claim No.: 000328931-001, Policy.: PS 7610507 17 referenced in the complaint involving CLIFTON SHAW, which were received by plaintiff after September 12, 2017, 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 to pay No-Fault claims

submitted in relation to the July 23, 2017 loss, Claim No.: 000328931-001, Policy.: PS 7610507 17 referenced in the complaint involving CLIFTON SHAW, which relate to claims received by plaintiff after September 12, 2017 are hereby permanently stayed.

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

1/20/2021
DATE


LAURENCE L. LOVE, 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