

<b>State Farm Mut. Auto. Ins. Co. v Atlas PT, P.C.</b>
2021 NY Slip Op 31271(U)
April 9, 2021
Supreme Court, New York County
Docket Number: 159034/2019
Judge: Margaret A. Chan
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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET PUI CHAN PART IAS MOTION 33EFM

Justice

-----X

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 159034/2019

MOTION DATE 10/16/2020

MOTION SEQ. NO. 001

- v -

ATLAS PT, P.C., AZNY CHIROPRACTIC, P.C., DEAN CHIROPRACTIC, P.C., NEW PORT ACUPUNCTURE, P.C., NY QUEENS PHYSICAL THERAPY P.C., OPUS PSYCHOLOGICAL SERVICES, P.C., RVS SUPPLY CORP., MELISSA SALLAH, D.C., ANANTHAKUMAR THILLAINATHAN, M.D., SHEN YONG, L.AC., ACCURATE MONITORING, LLC, ALEXIOS APAZIDIS, M.D., P.C., ANESTHESIA PROFESSIONALS PA, ATLAS RADIOLOGY, P.C., EXCELL CLINICAL LAB, INC., GENTLE TOUCH CHIROPRACTIC CARE, PLLC, HORIZON ANESTHESIA GROUP, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, KAZU ACUPUNCTURE, P.C., LENCO DIAGNOSTIC LABORATORIES, INC., MANALAPAN SURGERY CENTER, NEUROPHYSIOLOGIC INTERPRETIVE MEDICINE, PLLC, NEW HORIZON AMBULATORY SURGICAL CENTER, LLC, ROXBURY ANESTHESIA, LLC, SMOOTH TOUCH ACUPUNCTURE, P.C., STARLIGHT P.T. P.C., THOMPSON MEDICAL, P.C., ROSE C. SAINT-JEAN, OLANTIA ASHCROFT, ALEISHA GREENWOOD, STEPHANIE WINTER, KARA DAVIS, ROLAND PITTON, DOMINIQUE SMITH

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for JUDGMENT - DEFAULT

In this no-fault insurance matter, plaintiff State Farm Mutual Automobile Insurance Company (State Farm) moves for: (1) entry of default judgment pursuant to CPLR 3215 against defendants Atlas PT, P.C., Dean Chiropractic, P.C., New Port Acupuncture, P.C., NY Queens Physical Therapy, P.C., Opus Psychological Services, P.C., RVS Supply Corp., Accurate Monitoring, LLC, Anesthesia Professionals PA, Atlas Radiology, P.C., Excell Clinical Lab, Inc., Gentle Touch Chiropractic Care, PLLC, Horizon Anesthesia Group, P.C., Integrated Pain Management, PLLC, Kazu Acupuncture, P.C., Lenco Diagnostic Laboratories, Inc., Manalapan Surgery Center,

Neurophysiologic Interpretive Medicine, PLLC, New Horizon Ambulatory Surgical Center, LLC, Roxbury Anesthesia, LLC, Smooth Touch Acupuncture, P.C., Starlight P.T. P.C., Thompson Medical, P.C., Rose C. Saint-Jean, Olantia Ashcroft, Stephanie Winter, Kara Davis, and Dominique Smith (collectively, defaulting defendants); and (2) to extend time to serve Shen Young, L.AC., Aleisha A. Greenwood, and Roland Pitton, Jr. pursuant to CPLR § 306-b. Plaintiff does not move for default judgment against AZNY Chiropractic, P.C., Melissa Sallah, D.C., Ananthakumar Thillainathan, M.D., Shen Yong, L.AC., Alexios Apazidis, M.D., P.C., Aleisha A. Greenwood, or Roland Pitton, Jr. at this time. Plaintiff's motion is unopposed.

The branch of plaintiff's motion for entry of default judgment against the defaulting defendants is granted. Plaintiff offers the affidavits of service on the defaulting defendants (NYSCEF # 45). Plaintiff additionally offers proof of service of the notice of default on the defaulting defendants (NYSCEF # 58). As such, plaintiff has provided proof of proper service in this matter.

Plaintiff additionally offers proof of the default; none of the defaulting defendants have appeared or answered in this matter. The time within which the defaulting defendants may answer or otherwise move to respond to the complaint has expired and has not been extended. Plaintiff's motion is timely filed.

For proof of its claim that the auto accident in question was a deliberate collision caused in furtherance of an insurance fraud scheme, plaintiff offers its verified complaint, the affidavit of claims specialist Leslie Whiteside, a police report, examination under oath (EUO) scheduling letters, and the insurance policy (NYSCEF ## 43, 44, 46, 48, 53). A "deliberate collision caused in furtherance of an insurance fraud scheme is not a covered event" (*State Farm Mut. Auto Ins. Co. v Laguerre*, 305 AD2d 490, 491 [2d Dept 2003]).

A no-fault insurer may disclaim coverage based upon "the fact or founded belief that the alleged injury does not arise out of an insured incident" (*Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). Plaintiff here provides copious evidence for its well-founded belief that the alleged injuries do not arise out of an insured incident.

Furthermore, the insured, Rose C. Saint-Jean, failed to appear for an EUO (NYSCEF # 54). Failure to appear for an EUO is a violation of a condition precedent to coverage (*Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 449, 560 [1st Dept 2011]).

Plaintiff is entitled to disclaim any potential duty to defend and indemnify the insured and Ashcroft for liability purposes with respect to any potential claims of Greenwood (the driver), Winter or Davis (passengers).

The branch of plaintiff's motion to extend time to serve Shen Yong, L.AC., Aleisha Greenwood, and Roland Pitton, Jr. is granted. CPLR § 306-b provides that "[s]ervice of the summons and complaint... shall be made within one hundred twenty days after the filing of the summons and complaint... or upon good cause shown or in the interest of justice, extend the time for service" (CPLR § 306-b).

"A 'good cause' extension requires a showing of reasonable diligence in attempting to effect service upon a defendant" (*Henneberry v Borstein*, 91 AD3d 493, 496 [1st Dept 2012]). Alternatively, a case may qualify under the 'interest of justice' prong of CPLR § 306-b and 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" (*id.* at 496 [internal citations omitted]).

Plaintiff has diligently attempted to serve Shen Yong, P.C., Greenwood, and Pitton, Jr. (NYSCEF # 57), and asserts a meritorious cause of action. Defendants will experience no prejudice. As such, plaintiff is entitled to an extension of time to serve defendants.

Accordingly, it is ORDERED that the branch of plaintiff's motion for default judgment against Atlas PT, P.C., Dean Chiropractic, P.C., New Port Acupuncture, P.C., NY Queens Physical Therapy, P.C., Opus Psychological Services, P.C., RVS Supply Corp., Accurate Monitoring, LLC, Anesthesia Professionals PA, Atlas Radiology, P.C., Excell Clinical Lab, Inc., Gentle Touch Chiropractic Care, PLLC, Horizon Anesthesia Group, P.C., Integrated Pain Management, PLLC, Kazu Acupuncture, P.C., Lenco Diagnostic Laboratories, Inc., Manalapan Surgery Center, Neurophysiologic Interpretive Medicine, PLLC, New Horizon Ambulatory Surgical Center, LLC, Roxbury Anesthesia, LLC, Smooth Touch Acupuncture, P.C., Starlight P.T. P.C., Thompson Medical, P.C., Rose C. Saint-Jean, Olantia Ashcroft, Stephanie Winter, Kara Davis, and Dominique Smith is granted; it is further

ORDERED, DECLARED, and ADJUDGED that plaintiff is not obligated to provide No-Fault coverage to Atlas PT, P.C., Dean Chiropractic, P.C., New Port Acupuncture, P.C., NY Queens Physical Therapy, P.C., Opus Psychological Services, P.C., RVS Supply Corp., Accurate Monitoring, LLC, Anesthesia Professionals PA, Atlas Radiology, P.C., Excell Clinical Lab, Inc., Gentle Touch Chiropractic Care, PLLC, Horizon Anesthesia Group, P.C., Integrated Pain Management, PLLC, Kazu Acupuncture, P.C., Lenco Diagnostic Laboratories, Inc., Manalapan Surgery Center, Neurophysiologic Interpretive Medicine, PLLC, New Horizon Ambulatory Surgical Center, LLC, Roxbury Anesthesia, LLC, Smooth Touch Acupuncture, P.C., Starlight P.T. P.C., Thompson Medical, P.C., Rose C. Saint-Jean, Olantia Ashcroft, Stephanie Winter, Kara Davis, and Dominique Smith for the No-Fault claims submitted to plaintiff pursuant to State Farm claim number 52-6669-F12; it is further

ORDERED that the branch of plaintiff's motion to extend time to serve defendants Shen Young, L.A.C., Aleisha A. Greenwood, and Roland Pitton, Jr. pursuant to CPLR § 306-b is granted; it is further

ORDERED that plaintiff shall have forty-five (45) days from entry of this order to effectuate service on Shen Young, L.A.C., Aleisha A. Greenwood, and Roland Pitton, Jr.; it is further

ORDERED that this action is discontinued as to defendants AZNY Chiropractic, P.C., Melissa Sallah, D.C., and Ananthakumar Thillainathan, M.D. pursuant to the stipulation of partial discontinuance (NYSCEF # 39); it is further

ORDERED that plaintiff is to serve a copy of this order with notice of entry upon all parties at their last known addresses and the County Clerk's Office and the Clerk of the Trial Support Office within fifteen days of the issuance of this Order; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment as written.

This constitutes the Decision and Order of the court.

  
MARGARET A. CHAN, J.S.C.

4/9/2021  
DATE

\_\_\_\_\_  
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE