

Liberty Mut. Ins. Co. v Kamara
2021 NY Slip Op 31638(U)
May 12, 2021
Supreme Court, New York County
Docket Number: 651130/2020
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 63M

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 651130/2020

MOTION DATE 05/04/2021

MOTION SEQ. NO. 001

- v -

IDRISSA KAMARA, ACCESS MEDICAL DIAGNOSTIC
SOLUTIONS PC, RICHMOND UNIV MED CTR, RICHMOND
UNIVERSITY MEDICAL CENTER, UNITED CARE MEDICAL
PLLC

Defendant.

**DECISION + ORDER ON
MOTION**

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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, 18, 19, 20, 21, 22, 23, 24

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

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

Plaintiff commenced the instant action by filing a summons and complaint on February 20, 2020, seeking a declaration that Liberty Mutual has no duty to provide coverage or make payment to claims for No-fault benefits made by or on assignment of Idrissa Kamara and thus is entitled to a Permanent Injunction and ultimately dismissal of all pending litigation and arbitration in connection with the no-fault billing submitted under the fraudulently obtained policy. Plaintiff served defendant, Idrissa Kamara, on March 14, 2020 pursuant to CPLR 308(2) by delivering a copy to Mrs. Kamara at 225 Park Hill Avenue, Apt. 2V, Staten Island, NY 10307. On Over thirty days have elapsed since the completion of service in this action and defendant has failed to appear in this action. On March 19, 2020, the corporate defendants were served pursuant to BCL 306. On March 10, 2020, plaintiff mailed a copy of the Summons and Complaint in this action to all defendants at their last known address pursuant to CPLR § 3215(g)(3) and (4). Plaintiff now moves

to enter a default judgment pursuant to CPLR § 3215 against defendants, Idrissa Kamara, Access Medical Diagnostic Solutions, PC, Richmond University Medical Center and United Care Medical, PLLC.

Plaintiff demonstrated the merits of their claim by submitting the affidavit of Lee Ann Fink, an SIU investigator employed by plaintiff and Darren Demmon, an underwriter employed by plaintiff, together with a transcript of Idrissa Kamara's EUO and the relevant denial of claims forms (see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept 1997]; *Rafiq v. Weston*, 171 AD2d 783 [2nd Dept 1991]; *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]). Taken together, the submitted proofs establish as follows: Liberty Mutual issued automobile insurance policy number AOS28119363570, effective September 21, 2018 through September 21, 2019, to Idrissa Kamara. The policy address given to plaintiff by Idrissa Kamara was 1530 Allegheny Ave., Apt. J12, Reading, PA 19601. Based on this address, Liberty Mutual charged a premium of \$2,032.00. Following a loss that allegedly occurred on June 7, 2019, plaintiff opened an investigation which revealed that Mr. Kamara appears to reside and garage the insured vehicle at 225 Park Hill Ave., Apt. 2V, Staten Island, NY 10307. Based upon same, Liberty Mutual noticed Mr. Kamara to appear for an EUO where Mr. Kamara gave inconsistent answers regarding his residence. Upon discovery of the correct address in Staten Island, NY at 225 Park Hill Ave., Apt. 2V, the policy was re-rated, and the premium increased to \$4,909.00. It is well settled law that a 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 N.Y.S.2d 858 (N.Y. Sup., 2012); *Carpinone v. Mutual of Omaha Ins. Co.*, 697 N.Y.S.2d 381 (N.Y.App.Div.3.Dept., 1999). As such, plaintiff has established an entitlement to a default

judgment. Subsequent to the submission of the instant motion, this action was discontinued as against Access Medical Diagnostic Solutions, PC.

In opposition, defendants, Idrissa Kamara and United Care Medical, PLLC seek to compel the acceptance of a late answer. Pursuant to CPLR 2004, Courts can extend the time imposed by statute upon good cause shown. Pursuant to CPLR 3012(d), “Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.” It is well-established law that: “[a] defendant who has failed to timely appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a meritorious defense to the action, when . . . moving . . . to compel the acceptance of an untimely answer.” (*Lipp v. Port Authority of New York and New Jersey*, 34 AD3d 649 [2d Dept 2006]). Defendant’s opposition papers are without merit as to the timeliness of plaintiff’s motion to enter a default judgment and fail to include an affidavit on behalf of Idrissa Kamara or United Care Medical, PLLC establishing a reasonable excuse for their defaults.

ORDERED that plaintiff’s motion is GRANTED in its entirety; and it is further

ORDERED that Liberty Mutual has no duty to provide coverage or make payment to claims for No-fault benefits made by or on assignment of IDRISKA KAMARA and is granted a Permanent Injunction and dismissal of all pending litigation and arbitration filed by Richmond University Medical Center and United Care Medical, PLLC in connection with the no-fault billing submitted under the subject policy; and it is further

ORDERED that Richmond University Medical Center and United Care Medical, PLLC are barred from submitting any new bills to the Plaintiff with regards to the Idrissa Kamara are

barred from commencing any new litigation or arbitration for any previously submitted bills that were denied.

5/12/2021
DATE


LAURENCE L. LOVE, J.S.C.

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