

Country-Wide Ins. Co. v Martinez
2021 NY Slip Op 32791(U)
December 15, 2021
Supreme Court, New York County
Docket Number: Index No. 652914/2021
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY BANNON

PART

42

Justice

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

- v -

VASILY MARTINEZ, LINCOLN MEDICAL MENTAL
HEALTH CENTER, NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, STAND UP MRI OF BRONX,
PC, DOWNTOWN BRONX MEDICAL ASSOCIATES, P.C.,
PHOENIX MEDICAL SERVICES, P.C., ROXBURY
ANESTHESIA, LLC, WESTCHESTER RADIOLOGY &
IMAGING P.C., WELLNESS PLAZA ACUPUNCTURE P.C.,
GARA MEDICAL CARE, P.C., ACCELERATED
CHIROPRACTIC CARE, PC, SKY OF NY 1, INC, BROOK
CHIROPRACTIC OF NY P.C., PARKSIDE CHIROPRACTIC,
P.C., WELCOME CHIROPRACTIC, P.C., P & D
MERCHANDISE CORP., EXCELL CLINICAL
LABORATORY, INC.

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for

DEFAULT JUDGMENT

**DECISION + ORDER ON
MOTION**

In this declaratory judgment action, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against defendants Vasily Martinez (the individual defendant), Stand Up MRI of Bronx, PC, Downtown Bronx Medical Associates, P.C., Phoenix Medical Services, P.C., Roxbury Anesthesia, LLC, Westchester Radiology & Imaging P.C., Wellness Plaza Acupuncture P.C., Gara Medical Care, P.C., Accelerated Chiropractic Care, PC, Sky of NY 1, Inc., Brook Chiropractic of NY P.C., Parkside Chiropractic, P.C., Welcome Chiropractic, P.C., and P & D Merchandise Corp. (collectively, the medical provider defendants). The plaintiff seeks a judgment declaring that it is not obligated to pay no-fault benefits under policy number RT 7094782 16, claim number 000327068-002, in connection with injuries that the individual defendant allegedly sustained in a motor vehicle accident on May 21, 2017, or to reimburse the medical provider defendants for treatment they rendered or equipment and supplies they

provided to him for his alleged injuries on the ground that the individual defendant failed to appear for duly scheduled Independent Medical Examinations (IMEs). The plaintiff also moves to permanently stay any arbitrations or court hearings brought by the defendants for no-fault benefits stemming from the alleged May 21, 2017 accident involving the individual defendant. No opposition is submitted. The motion is granted.

Initially, the court notes that the plaintiff discontinued the action as against defendant Excell Clinical Laboratory, Inc. by stipulation filed October 28, 2021. Further, while the court, by order dated November 5, 2021, struck the answers of defendants New York City Health and Hospitals and Lincoln Medical Mental Health Center and permitted the plaintiff to move for a default judgment or seek other relief as against them within 30 days, the plaintiff failed to make a timely application. Therefore, the plaintiff is not entitled to relief against those defendants.

“On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720 [2nd Dept. 2008]).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011). “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the *prima facie* validity of the uncontested cause of action [see, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22–3215.27].” Joosten v Gale, 129 AD2d 531, 535 (1st Dept. 1987); see Martinez v Reiner, 104 AD3d 477 (1st Dept. 2013); Beltre v Babu, 32 AD3d 722 (1st Dept. 2006); Atlantic Cas. Ins. Co. v RJNJ Services, Inc., *supra*. While the “quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered.” Guzetti v City of New York, 32 AD3d 234, 236 (1st Dept. 2006). The proof submitted must establish a *prima facie* case. See Guzetti v City of New York, *supra*.

The plaintiff’s motion for leave to enter a default judgment is granted inasmuch as the plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendants’ failures to appear or answer. See CPLR 3215(f); Atlantic Cas. Ins. Co. v RJNJ Services, Inc., *supra*. Indeed, having failed to answer, the defendants are “deemed to have admitted all factual allegations in the complaint and all

reasonable inferences that flow from them.” Woodson v Mendon Leasing Corp., 100 NY2d 62, 70–71 (2003).

In support of its motion, the plaintiff submits, *inter alia*, the pleadings, an attorney’s affirmation, the NF-2 form, at least three NF-3 claim forms from the medical provider defendants marked received July 10, 2017, its first IME notice dated July 21, 2017 scheduling an IME for August 3, 2017 at 11:15am, a subsequent IME notice dated August 11, 2017, scheduling an IME for August 24, 2017 at 11:00am. The plaintiff additionally submits the affidavits of Kyaw Nyein, Annie Persaud, and Anita Megnauth, employees of the plaintiff, and the NF-10 denial form, dated August 28, 2017. The denial form states, in pertinent part, that the entire claim was denied due to a violation of the policy conditions – namely, the individual defendant’s failure to appear for IMEs on the abovementioned dates.

Since the failure to appear for duly scheduled IMEs is a breach of a condition precedent to the effectiveness of no-fault coverage, the plaintiff has established, *prima facie*, that it is entitled the relief sought as the coverage was vitiated by the individual defendant’s failure to appear for the IMEs. See Unitrin Advantage Ins. Co. v Dowd, 194 AD3d 507 (1st Dept. 2021); Unitrin Direct Ins. Co. v Beckles, 188 AD3d 620, 621 (1st Dept. 2020); Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1st Dept. 2017); Unitrin Advantage Insurance Company v Bayshore Physical Therapy, PLLC, 82 AD3d 559 (1st Dept. 2011).

Accordingly, it is

ORDERED that the action is discontinued and the complaint is dismissed, with prejudice and without costs, as against defendant Excell Clinical Laboratory, Inc. pursuant to the parties’ stipulation of discontinuance filed October 28, 2021; and it is further

ORDERED that the plaintiff’s motion pursuant to CPLR 3215 for leave to enter a default judgment is granted, without opposition; and it is further

ADJUDGED and DECLARED that defendants Vasily Martinez, Stand Up MRI of Bronx, PC, Downtown Bronx Medical Associates, P.C., Phoenix Medical Services, P.C., Roxbury Anesthesia, LLC, Westchester Radiology & Imaging P.C., Wellness Plaza Acupuncture P.C., Gara Medical Care, P.C., Accelerated Chiropractic Care, PC, Sky of NY 1, Inc., Brook

Chiropractic of NY P.C, Parkside Chiropractic, P.C., Welcome Chiropractic, P.C., and P & D Merchandise Corp. are not entitled to no-fault benefits pursuant to Article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on May 21, 2017, and that the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defendants under policy number RT 7094782 16, claim number 000327068-002; and it is further

ADJUDGED AND DECLARED that all actions, proceedings or arbitrations arising from injuries alleged to have been sustained by the individual defendant as a result of the alleged May 21, 2017 motor vehicle accident are permanently stayed, and that defendants Vasily Martinez, Stand Up MRI of Bronx, PC, Downtown Bronx Medical Associates, P.C., Phoenix Medical Services, P.C., Roxbury Anesthesia, LLC, Westchester Radiology & Imaging P.C., Wellness Plaza Acupuncture P.C., Gara Medical Care, P.C., Accelerated Chiropractic Care, PC, Sky of NY 1, Inc., Brook Chiropractic of NY P.C., Parkside Chiropractic, P.C., Welcome Chiropractic, P.C., and P & D Merchandise Corp. are enjoined from commencing any such further actions, proceedings, or arbitrations; and it is further

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision, Order, and Judgment of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

<u>12/15/2021</u>			
DATE			
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