

**State Farm Fire & Cas. Co. v Quinones**

2022 NY Slip Op 30268(U)

January 19, 2022

Supreme Court, New York County

Docket Number: Index No. 152505/2021

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36M

Justice

STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff, INDEX NO. 152505/2021 MOTION SEQ. NO. 001

- v -

FELIX QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN, ADVANCED COMPREHENSIVE LABORATORY LLC, AMBULATORY SURGICAL CENTER OF ENGLEWOOD, LLC, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, ASCE ANESTHESIA PC, BLISS ACUPUNCTURE P.C., BL PAIN MANAGEMENT, PLLC, BPC CHIROPRACTIC P.C., BP DYNAMIC REHAB PT P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC., ENGLEWOOD ORTHOPEDICS GROUP PC, FAST CARE MEDICAL DIAGNOSTICS, PLLC, GRAND MEDICAL SUPPLY CORP, HYUN PHYSICAL THERAPY, P.C., ICONIC WELLNESS SURGICAL SERVICES L.L.C., JORDAN FERSEL M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LENCO DIAGNOSTIC LABORATORIES, INC. LZ MEDICAL DIAGNOSTIC P.C., MAZ SUPPLY INC, MG CHIROPRACTIC, P.C., MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PERFORMANCE CHIROPRACTIC, P.C., PETRYCHENKO-PHYSICIAN P.C., RENAN MACIAS, M.D., STEPHEN MATRANGOLO, D.C., TIME TO CARE PHARMACY INC., TREND MED, INC, TROMBMED NY, INC., and YEVGENIY MARGULIS, PhD, Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

were read on this motion to/for DEFAULT JUDGMENT

Plaintiff now moves this court, pursuant to CPLR 3215, for a default judgment against FELIX A. QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-

TIBAN, ADVANCED COMPREHENSIVE LABORATORY LLC d/b/a TOPLAB, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, BLISS ACUPUNCTURE P.C., BPC CHIROPRACTIC P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC. d/b/a EXPRESS PHARMACY, HYUN PHYSICAL THERAPY, P.C., , JORDAN FERSEL M.D., P.C., JOSEPH A. RAI, M.D., P.C., Lenco DIAGNOSTIC LABORATORIES, INC., LZ MEDICAL DIAGNOSTIC P.C., , MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PETRYCHENKO PHYSICIAN P.C., and TROMBEMED NY, INC (“the defaulting defendants”)<sup>1</sup> and a declaration that plaintiff is not required to pay no-fault benefits to the defaulting defendants since the individual defendants FELIX A. QUINONES, MIGUEL BURGOS and KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN procured the subject policy based on material misrepresentations. (NYSCEF Doc. No. 52, *affirmation in support of motion*).

Despite service of the motion, the defaulting defendants have failed to appear or oppose the motion. (NYSCEF Doc. No. 98, *affidavit of service*).

CPLR 3215(a) provides, in pertinent part, that when “a defendant has failed to appear, plead or proceed to trial . . . the plaintiff may seek a default judgment against him [or her].” To establish his or her entitlement to a default judgment, the movant must demonstrate proof of service of the summons and complaint, proof of the facts constituting the claim and proof of the default. (See *PV Holding Corp. v AB Quality Health Supply Corp.*, 2020 NY Slip Op 07725, \*1 [1st Dept 2020]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]). An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. (See *Zelnick v Biderman Industries U.S.A., Inc.*, 242 AD2d 227, 228 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422, 422 [2d Dept 1996].)

An insurer may assert a lack of coverage based on a material misrepresentation. “A misrepresentation is material if the insurer would not have issued the policy had it known the facts misrepresented.” (*Liberty Mut. Ins. Co. v Castillo*, 2020 NY Slip Op 34358[U], \*2 [Sup Ct, NY County 2020]). “To establish materiality as a matter of law, the insurer must present documentation concerning its underwriting practices, such as underwriting manuals, bulletins, or rules pertaining to similar risks, that show that it would not have issued the same policy if the correct information had been disclosed in the application.” (*Schirmer v Penkert*, 41 AD3d 688, 690-691 [2d Dept 2007].)

Here, plaintiff has demonstrated that the defaulting defendants were duly served with process and that additional copies of the pleadings were mailed as required by CPLR 3215 (g)(4). (NYSCEF Doc. No. 60-91, *affidavits of service*). Plaintiff also annexes affirmation of

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<sup>1</sup> Although plaintiff also seeks relief against AMBULATORY SURGICAL CENTER OF ENGLEWOOD, LLC, ASCE ANESTHESIA PC, and ENGLEWOOD ORTHOPEDICS GROUP PC., plaintiff later stipulated to accept their answers. (NYSCEF Doc. Nos. 109, 112, *stipulation and answer*). Further, plaintiff discontinued the action as to defendants MAZ SUPPLY INC., ICONIC WELLNESS SURGICAL SERVICES L.L.C., and TREND MED, INC. (NYSCEF Doc. Nos. 102-103).

non-military status of the individual defaulting defendants. (NYSCEF Doc. Nos. 62,64,66). To date, the defaulting defendants have failed to answer, appear, or obtain an order from the court extending the time to do so, and the time to answer or otherwise appear has expired.

As to the facts constituting the claim, plaintiff submits, *inter alia*, the subject insurance policy (NYSCEF Doc. No. 68, *insurance policy*); the examinations under oath of MIGUEL BURGOS and KEVIN GONZALEZ (NYSCEF Doc. Nos. 69-70, *EUO transcripts*). Further, upon review of the affidavit of Timothy Dacey ("Dacey"), plaintiff's claims specialist, who affirms that the individual defendants staged and/or intentionally caused the accident on February 26, 2020 (NYSCEF Doc. No. 55, *Dacey's affidavit*), this court finds that plaintiff has established the facts constituting the claim. Accordingly, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against FELIX A. QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN, ADVANCED COMPREHENSIVE LABORATORY LLC d/b/a TOPLAB, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, BLISS ACUPUNCTURE P.C., BPC CHIROPRACTIC P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC. d/b/a EXPRESS PHARMACY, HYUN PHYSICAL THERAPY, P.C., JORDAN FERSEL M.D., P.C., JOSEPH A. RAIA, M.D., P.C., Lenco DIAGNOSTIC LABORATORIES, INC., LZ MEDICAL DIAGNOSTIC P.C., MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PETRYCHENKO PHYSICIAN P.C., and TROMBMED NY, INC is granted; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiff has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards or benefits to FELIX A. QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN, ADVANCED COMPREHENSIVE LABORATORY LLC d/b/a TOPLAB, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, BLISS ACUPUNCTURE P.C., BPC CHIROPRACTIC P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC. d/b/a EXPRESS PHARMACY, HYUN PHYSICAL THERAPY, P.C., JORDAN FERSEL M.D., P.C., JOSEPH A. RAIA, M.D., P.C., Lenco DIAGNOSTIC LABORATORIES, INC., LZ MEDICAL DIAGNOSTIC P.C., MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PETRYCHENKO PHYSICIAN P.C., and TROMBMED NY, INC, their agents, employees, assignees or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover no-fault benefits with respect to the claims submitted by FELIX A. QUINONES, MIGUEL BURGOS, and KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN in connection with the February 26, 2020 loss referenced in the complaint; and it is further

ORDERED, ADJUDGED and DECLARED that all no-fault lawsuits, arbitrations, including uninsured motorist, awards, and claims filed by FELIX A. QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN, ADVANCED COMPREHENSIVE LABORATORY LLC d/b/a TOPLAB, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, BLISS ACUPUNCTURE P.C., BPC CHIROPRACTIC P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC. d/b/a EXPRESS PHARMACY, HYUN PHYSICAL THERAPY, P.C., JORDAN FERSEL M.D., P.C.,

JOSEPH A. RAI, M.D., P.C., LENCO DIAGNOSTIC LABORATORIES, INC., LZ MEDICAL DIAGNOSTIC P.C., MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PETRYCHENKO PHYSICIAN P.C., and TROMBMED NY, INC, arising from or related to the claims submitted by FELIX A. QUINONES, MIGUEL BURGOS, and KEVIN GONZALEZ a/k/a KEVIN GONZALEZ-TIBAN in connection with the February 26, 2020 loss referenced in the complaint are hereby stayed; and it is further

ORDERED that this judgment shall have no effect as to the appearing defendants; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiffs shall serve a copy of this decision and order, with notice of entry, upon defendants, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptmanh).

ORDERED that all parties who have appeared in this action shall participate in a remote conference on April 6, 2022, details which shall be provided no later than April 4, 2022.

January 19, 2022

HON. VERNA L. SAUNDERS, JSC

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