

Liberty Mut. Ins. Co. v Lordeis
2022 NY Slip Op 30287(U)
January 19, 2022
Supreme Court, New York County
Docket Number: Index No. 655694/2020
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

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INDEX NO. 655694/2020

LIBERTY MUTUAL INSURANCE COMPANY and
LM GENERAL INSURANCE COMPANY,
Plaintiffs,

MOTION SEQ. NO. 001

- v -

JEAN MARCEL LORDEIS,
LTAI CORP DBA GET READY MEDICAL SUPPLY,
APEX MEDICAL PC,
ARISTA PHYSICAL THERAPY PC,
ATLAS RADIOLOGY PC,
CAVALLARO MEDICAL SUPPLY INC.,
CITY WIDE HEALTH FACILITY INC.,
CONTEMPORARY ORTHOPEDICS, PLLC,
CPM MED SUPPLY INC.,
CVS RX INC.,
DV CHIROPRACTIC CARE, PC dba 21 CENTURY
CHIROPRACTIC CARE,
G M WELLNESS MEDICAL PC,
HEALTH EAST MEDICAL ALLIANCE LLC,
IGOR MAYZENBERG L.AC.,
INEW REHAB PHYSICAL THERAPY PC,
JOKE IRENE BAMGBOPA, FNP-C,
JULY GAYSYNSKY, MD
NY CHIROPRACTIC REHABILITATION PC,
NYEEQASC LLC, PROTECHMED, INC.,
RAF SPORTS CHIROPRACTIC PC,
RAINE M PESIDAS PHYSICAL THERAPY PC,
RENAN MACIAS, RIGHT CHOICE SUPPLY INC.,
SEDATION VACATION PERLOP MED P,
SONIA ARMENGOL, MD
STRAND PHARMACY DBA ASTORIA DRUGS, INC.,
SUFFICIENT CHIROPRACTIC CARE PC,
TOPLAB aka ADVANCED COMPREHENSIVE
LABORATORY, LLC,
UNICAST INC.,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for

DEFAULT JUDGMENT

Plaintiff now moves this court, pursuant to CPLR 3215, for a default judgment against JEAN MARCEL LORDEIS, APEX MEDICAL PC., ARISTA PHYSICAL THERAPY PC., ATLAS RADIOLOGY PC., CONTEMPORARY ORTHOPEDICS, PLLC., CPM MED SUPPLY INC., CVS RX INC., DV CHIROPRACTIC CARE, PC. dba 21 CENTURY

CHIROPRACTIC CARE, G M WELLNESS MEDICAL PC., HEALTH EAST MEDICAL ALLIANCE LLC., IGOR MAYZENBERG L.AC., INEW REHAB PHYSICAL THERAPY PC., JOKE IRENE BAMGBOPA, FNP-C, JULY GAYSYNKY MD, PROTECHMED, INC., RAINE M PESIDAS PHYSICAL THERAPY PC., RIGHT CHOICE SUPPLY INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC., SONIA ARMENGOL, M.D., and TOPLAB aka ADVANCED COMPREHENSIVE LABORATORY, LLC. (“the defaulting defendants”) and a declaration that plaintiff is not required to pay no-fault benefits to the defaulting defendants since the claimant defendant JEAN MARCEL LORDEIS procured the subject policy based on a material misrepresentation regarding his address. (NYSCEF Doc. No. 20, *affirmation in support of motion*).

Despite service of the motion, the defaulting defendants have failed to appear or oppose the motion. (NYSCEF Doc. No. 41, *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. 23-24, *affidavits of service*). Plaintiff also annexes an affirmation of non-military status of the claimant defendant. (NYSCEF Doc. Nos. 25). 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 affidavits of Liberty Mutual Insurance Company’s lead compliance analyst, Darren Demmon, and its investigator, Lee Ann Fink; and claimant’s examination under oath transcript (NYSCEF Doc. Nos. 29, 32, 34). Based upon a review of the foregoing, this court finds that plaintiff has set forth the facts

constituting its claim that claimant misrepresented that he lived in Eldred, Pennsylvania when he procured the subject insurance policy, and that said misrepresentation was material. (see *Ins. Co. of N. Am. v Kaplun*, 274 AD2d 293, 299-300 [2d Dept 2000]; *AA Acupuncture Serv., P.C. v Safeco Ins. Co. of Am.*, 25 Misc 3d 30, 31-32 [1st Dept, App Term 2009].) Therefore, in accordance with the foregoing, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against JEAN MARCEL LORDEIS, APEX MEDICAL PC., ARISTA PHYSICAL THERAPY PC., ATLAS RADIOLOGY PC., CONTEMPORARY ORTHOPEDICS, PLLC., CPM MED SUPPLY INC., CVS RX INC., DV CHIROPRACTIC CARE, PC. dba 21 CENTURY CHIROPRACTIC CARE, G M WELLNESS MEDICAL PC., HEALTH EAST MEDICAL ALLIANCE LLC., IGOR MAYZENBERG L.AC., INEW REHAB PHYSICAL THERAPY PC., JOKE IRENE BAMGBOPA, FNP-C, JULY GAYSYNSKY MD, PROTECHMED, INC., RAINE M PESIDAS PHYSICAL THERAPY PC., RIGHT CHOICE SUPPLY INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC., SONIA ARMENGOL, M.D., and TOPLAB aka ADVANCED COMPREHENSIVE LABORATORY, LLC. 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 JEAN MARCEL LORDEIS, APEX MEDICAL PC., ARISTA PHYSICAL THERAPY PC., ATLAS RADIOLOGY PC., CONTEMPORARY ORTHOPEDICS, PLLC., CPM MED SUPPLY INC., CVS RX INC., DV CHIROPRACTIC CARE, PC. dba 21 CENTURY CHIROPRACTIC CARE, G M WELLNESS MEDICAL PC., HEALTH EAST MEDICAL ALLIANCE LLC., IGOR MAYZENBERG L.AC., INEW REHAB PHYSICAL THERAPY PC., JOKE IRENE BAMGBOPA, FNP-C, JULY GAYSYNSKY MD, PROTECHMED, INC., RAINE M PESIDAS PHYSICAL THERAPY PC., RIGHT CHOICE SUPPLY INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC., SONIA ARMENGOL, M.D., and TOPLAB aka ADVANCED COMPREHENSIVE LABORATORY, LLC, 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 JEAN MARCEL LORDEIS in connection with the October 26, 2019 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 JEAN MARCEL LORDEIS, APEX MEDICAL PC., ARISTA PHYSICAL THERAPY PC., ATLAS RADIOLOGY PC., CONTEMPORARY ORTHOPEDICS, PLLC., CPM MED SUPPLY INC., CVS RX INC., DV CHIROPRACTIC CARE, PC. dba 21 CENTURY CHIROPRACTIC CARE, G M WELLNESS MEDICAL PC., HEALTH EAST MEDICAL ALLIANCE LLC., IGOR MAYZENBERG L.AC., INEW REHAB PHYSICAL THERAPY PC., JOKE IRENE BAMGBOPA, FNP-C, JULY GAYSYNSKY MD, PROTECHMED, INC., RAINE M PESIDAS PHYSICAL THERAPY PC., RIGHT CHOICE SUPPLY INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC., SONIA ARMENGOL, M.D., and TOPLAB aka ADVANCED COMPREHENSIVE LABORATORY, LLC in connection with the October 26, 2019 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/supctmanh).

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:

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