

Country-Wide Ins. Co. v Hoyos
2022 NY Slip Op 30434(U)
February 7, 2022
Supreme Court, New York County
Docket Number: Index No. 650047/2020
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA CRANE PART 60M

Justice

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INDEX NO. 650047/2020

COUNTRY-WIDE INSURANCE COMPANY,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

ESSAI HOYOS, LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC P.C., PSYCHOLOGY HELP P.C., ARON ROVNER MD, PLLC, NORTHWELL HEALTH, INC. F/K/A NORTH SHORE LIJ MEDICAL P.C., GARA MEDICAL CARE, P.C., FIFTH AVENUE SURGERY CENTER, LLC, HEALTHWISE MEDICAL ASSOCIATES P.C., NEIGHBORHOOD MEDICAL P.C. F/K/A DOS MANOS CHIROPRACTIC P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., MEDSOURCE SOLUTIONS, INC, MOGUL SUPPLIES INC, WOODHAVEN CHEMIST CORP, PMK ACUPUNCTURE P.C., MOVE BETTER PHYSICAL THERAPY PLLC, CROSSTOWN CHIROPRACTIC P.C., ALEXIA'S PHARMACY INC., JA PHYSICAL THERAPY P.C., IVS PHARMACY CORP, MC PHYSICAL THERAPY, P.C., OCEAN A & R PHARMACY INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 76, 84, 85, 86, 87, 88, 89

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff moves for a default judgment against the non-appearing defendants. Defendant Fifth Avenue Surgery Center, LLC ("Fifth Avenue") cross-moves to compel plaintiff to accept its late answer to the complaint. Plaintiff's motion is granted, and the cross motion is denied.

This case arises from an automobile accident on August 4, 2019 where defendant ESSAI HOYOS was involved in a motor vehicle accident while allegedly in a vehicle insured by plaintiff, Country-Wide Insurance Company ("Plaintiff"). Defendant made a claim to Plaintiff as a purported injured person under as insurance policy issued by Plaintiff (FCA3509262 18).

Plaintiff commenced an action on or about January 3, 2020, by the filing of a Summons and Complaint seeking a declaratory judgment against ESSAI HOYOS, LONG ISLAND JEWISH MEDICAL CENTER, PSYCHOLOGY HELP P.C., HILLSIDE FAMILY CHIROPRACTIC P.C., ARON ROVNER MD, PLLC, NORTHWELL HEALTH, INC. F/K/A NORTH SHORE LIJ MEDICAL P.C., GARA MEDICAL CARE, P.C., FIFTH AVENUE SURGERY CENTER, LLC, HEALTHWISE MEDICAL ASSOCIATES P.C., DOS MANOS CHIROPRACTIC P.C. C/O NEIGHBORHOOD MEDICAL P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., MEDSOURCE SOLUTIONS, INC, MOGUL SUPPLIES INC, WOODHAVEN CHEMIST CORP, PMK ACUPUNCTURE P.C., MOVE BETTER PHYSICAL THERAPY PLLC, CROSSTOWN CHIROPRACTIC P.C., ALEXIA'S PHARMACY INC., JA PHYSICAL THERAPY P.C., IVS PHARMACY CORP, MC PHYSICAL THERAPY, P.C., and OCEAN A & R PHARMACY INC., due to the alleged breach of contract by ESSAI HOYOS in failing to appear for a properly requested and scheduled Examination Under Oath. Plaintiff seeks a declaration that ESSAI HOYOS is not an eligible injured person entitled to no-fault benefits under the Policy, and that Plaintiff is not obligated to reimburse ESSAI HOYOS for alleged medical treatment, therapy and/or medical supplies rendered.

Plaintiff now moves for a default judgment pursuant to CPLR § 3215 against, ESSAI HOYOS, LONG ISLAND JEWISH MEDICAL CENTER, PSYCHOLOGY HELP P.C., ARON ROVNER MD, PLLC, NORTHWELL HEALTH, INC. F/K/A NORTH SHORE LIJ MEDICAL P.C., GARA MEDICAL CARE, P.C., FIFTH AVENUE SURGERY CENTER, LLC, HEALTHWISE MEDICAL ASSOCIATES P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., MEDSOURCE SOLUTIONS, INC, MOGUL SUPPLIES INC, WOODHAVEN CHEMIST CORP, PMK ACUPUNCTURE P.C., MOVE BETTER PHYSICAL THERAPY PLLC,

CROSSTOWN CHIROPRACTIC P.C., JA PHYSICAL THERAPY P.C., and MC PHYSICAL THERAPY, P.C.

Plaintiff submits affidavits of service showing service upon ESSAI HOYOS on August 12, 2021 and the Medical Provider Defendants on August 3, 2021. Plaintiff submits the affidavit of Kyaw Nyein, who is employed as a No-fault Claim Supervisor and the affidavit of Annie Persaud, the EUO Clerk at Country-Wide Insurance Company, in support of Plaintiff's motion for default judgment.

Fifth Avenue cross-moves to compel plaintiff to accept its late answer. It provides no reasonable excuse for its delay in answering and the court, in its discretion, declines to grant the cross motion. Fifth Avenue does not submit any affidavit from a person with knowledge surrounding the vague "confusion" it allegedly had when it received the summons and complaint and, later, this motion for a default judgment. Fifth Avenue does not deny timely receiving the pleadings at all.

Accordingly, it is

ORDERED that plaintiff's motion is granted and defendant's cross motion is denied; and it is further

ORDERED that Plaintiff's motion for default judgment against, ESSAI HOYOS, LONG ISLAND JEWISH MEDICAL CENTER, PSYCHOLOGY HELP P.C., ARON ROVNER MD, PLLC, NORTHWELL HEALTH, INC. F/K/A NORTH SHORE LIJ MEDICAL P.C., GARA MEDICAL CARE, P.C., FIFTH AVENUE SURGERY CENTER, LLC, HEALTHWISE MEDICAL ASSOCIATES P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., MEDSOURCE SOLUTIONS, INC, MOGUL SUPPLIES INC, WOODHAVEN CHEMIST CORP, PMK ACUPUNCTURE P.C., MOVE BETTER PHYSICAL THERAPY PLLC, CROSSTOWN

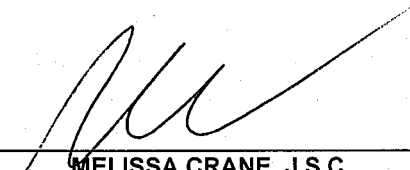
CHIROPRACTIC P.C., JA PHYSICAL THERAPY P.C., and MC PHYSICAL THERAPY, P.C.

is granted; and it is further,

ORDERED and ADJUDGED that on the first cause of action Plaintiff owes no duty to Defendants, ESSAI HOYOS, LONG ISLAND JEWISH MEDICAL CENTER, PSYCHOLOGY HELP P.C., ARON ROVNER MD, PLLC, NORTHWELL HEALTH, INC. F/K/A NORTH SHORE LIJ MEDICAL P.C., GARA MEDICAL CARE, P.C., FIFTH AVENUE SURGERY CENTER, LLC, HEALTHWISE MEDICAL ASSOCIATES P.C., QUEENS DIAGNOSTIC RADIOLOGY, P.C., MEDSOURCE SOLUTIONS, INC, MOGUL SUPPLIES INC, WOODHAVEN CHEMIST CORP, PMK ACUPUNCTURE P.C., MOVE BETTER PHYSICAL THERAPY PLLC, CROSSTOWN CHIROPRACTIC P.C., JA PHYSICAL THERAPY P.C, and MC PHYSICAL THERAPY, P.C., to pay No-Fault claims submitted in relation to the August 4, 2019 loss, Claim No.: 000346285-003, Policy.: FCA3509262 18, referenced in the complaint involving ESSAI HOYOS, and it is further,

ORDERED and ADJUDGED that on the second cause of action that all arbitrations, lawsuits and enforcement of awards or judgments in connection with the August 4, 2019 loss, Claim No.: 000346285-003, Policy.: FCA3509262 18, referenced in the complaint involving ESSAI HOYOS are hereby permanently stayed.

2/7/2022
DATE


MELISSA CRANE, J.S.C.

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