

Country-Wide Ins. Co. v Hull
2022 NY Slip Op 30457(U)
February 9, 2022
Supreme Court, New York County
Docket Number: Index No. 651212/2021
Judge: Sabrina B. Kraus
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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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INDEX NO. 651212/2021

COUNTRY-WIDE INSURANCE COMPANY,

MOTION DATE 02/08/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

SHARIFF HULL, NEWYORK-PRESBYTERIAN EMS, EBI
MEDICAL SYSTEMS, LLC,ESSEN MEDICAL
ASSOCIATES, P.C.,ARON ROVNER MD, PLLC,ARTHUR
AVENUE MEDICAL OFFICE, P.C.,METROPOLITAN
SURGICAL SERVICES LLC,HU RELIEF ACUPUNCTURE,
P.C.,RELIABLE CPM SURGICAL SUPPLIES INC.

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

BACKGROUND

This action arises from an automobile accident on September 14, 2016, wherein Shariff A. Hull (SH) was allegedly injured while in a vehicle insured by plaintiff. SH filed a claim with plaintiff as a purported injured person under an insurance policy, number RS 8119948 16, issued by plaintiff.

Plaintiff commenced this action on or about February 22, 2021, seeking a declaratory judgment against SH, New York Presbyterian EMS, EBI Medical Systems LLC, Essen Medical Associates, P.C., Aron Rovner MD, PLLC, Arthur Avenue Medical Office, P.C. Metropolitan Surgical Services LLC, HU Relief Acupuncture, P.C., and Reliable CPM Surgical Supplies Inc., as the monetary limit on the policy has been reached. Plaintiff further seeks a declaration that SH is not an eligible injured person or otherwise entitled to no-fault benefits under the policy, and that plaintiff is not obligated to reimburse SH for alleged medical treatment, therapy, lost wages,

medical supplies, and/or any other expenses associated with the referenced claim and date of loss.

PENDING MOTION

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendants SH, New York Presbyterian EMS, EBI Medical Systems LLC, Essen Medical Associates, P.C., Aron Rovner MD, PLLC, Arthur Avenue Medical Office, P.C. Metropolitan Surgical Services LLC, HU Relief Acupuncture, P.C., and Reliable CPM Surgical Supplies Inc. The defendants have failed to appear or submit opposition.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “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.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

On January 5, 2022, plaintiff filed a Request for Judicial Intervention (RJI). The portion of the RJI form entitled “Related Cases” was left blank. However, a search of court records reveals five (5) pending actions, involving plaintiff and defendant SH, and one of those actions also involves defendant Reliable CPM Surgical Supply Inc. (Reliable). That action, under index no. CV 743889/17/KI, wherein Reliable is represented by counsel, is active and pending in Kings County Civil Court. Counsel in that action was not served with notice of this action or of this motion.

Although not technically required by statute, when a defendant is known to be represented in a pending related action, the better practice is to serve a courtesy copy of the motion on the attorney representing the other party in a related proceeding.

Based on the forgoing the motion is denied without prejudice to renewal upon papers in which plaintiff identifies any other related proceedings and serves counsel in those proceedings with courtesy copies of the renewed motion.

CONCLUSION

Wherefore, it is hereby

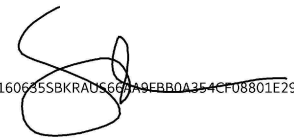
ORDERED that plaintiff's motion for a default judgment is denied without prejudice to renewal upon a statement by counsel of all proceedings related to this action; and it is further

ORDERED that service of a courtesy copy of any future motion for a default judgment in this action be made on any attorney representing any party herein, in those related proceedings; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on Melissa Betancourt, Esq. at 2761 Bath Avenue, Suite B1 & B2, Brooklyn, New York 11214, all other defendants and upon the County Clerk (60 Centre Street, Room 141B) and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that service of this order upon the Clerk 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).

This constitutes the decision and order of the court.



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2/9/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: