

<b>State Farm Mut. Auto. Ins. Co. v Batista</b>
2022 NY Slip Op 30550(U)
February 16, 2022
Supreme Court, New York County
Docket Number: Index No. 653554/2016
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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STATE FARM MUTUAL AUTOMOBILE INS. CO., STATE
FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

INDEX NO. 653554/2016

MOTION DATE 05/27/2021

MOTION SEQ. NO. 002

- v -

RAFAEL BATISTA, HEALTHWAY REHABILITATION, P.T.,
P.C., NOEL BLACKMAN PHYSICIAN, P.C., GUY VILLANO,
D.C., PRO EDGE CHIROPRACTIC, P.C., VERASO
MEDICAL SUPPLY, CORP.

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24,
25, 26, 27, 28, 29

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

This action arises from a non-commercial automobile insurance policy (the Policy) issued
by plaintiffs State Farm Mutual Automobile Ins. Co. and State Farm Fire and Casualty Company
(collectively, State Farm) to defendant Rafael Batista (Complaint, ¶ 10 [NYSCEF Doc. No. 1]).
Mr. Batista made a claim under the Policy for injuries sustained in a motor vehicle accident on
March 19, 2014 (the Accident) (id., ¶ 11). Defendants Healthway Rehabilitation, P.T., P.C.,
Noel Blackman Physician, P.C., Guy Villano, D.C., Pro Edge Chiropractic, P.C., and Veraso
Medical Supply, Corp. (collectively, the Provider Defendants) provided treatment to Mr. Batista
in connection with the Accident and have submitted claims to State Farm for such treatment (id.,
¶¶ 18-21). State Farm alleges that Mr. Batista was using the insured vehicle as a commercial
vehicle in violation of the terms of the Policy at the time of the Accident and is therefore not
covered under the Policy (id., ¶¶ 16, 22). Plaintiff asserts two causes of action for a declaratory
judgment: First, for a declaratory judgment against Mr. Batista, finding that he is not an

“eligible injured person” under the Policy and that the Accident did not trigger coverage under the Policy, and second, for a declaratory judgment against the Provider Defendants finding that, because the Accident did not trigger coverage under the Policy, State Farm is not obligated to honor or pay claims submitted by the Provider Defendants as assignees of Mr. Batista (*id.*, ¶¶ 23-41).

State Farm commenced this action by summons and complaint dated July 6, 2016. State Farm subsequently moved for a default judgment as against all defendants (*see* Notice of Motion, Mot. Seq. No. 001 [NYSCEF Doc. No. 3]). That motion was granted by decision and order dated August 28, 2017 (Decision and Order, Mot. Seq. No. 001 [NYSCEF Doc. No. 15]). In that decision and order, this Court ordered State Farm to serve a copy of the decision and order, together with a proposed judgment, on all defendants, and to submit the proposed judgment to the Clerk of the Court (*id.*). The proposed judgment was signed and filed by the Clerk of the Court on December 21, 2017 (Judgment [NYSCEF Doc. No. 19]).

The Provider Defendants now move for an order vacating their default and compelling State Farm to accept their answer (Notice of Motion [NYSCEF Doc. No. 20]). In support of the motion, the Provider Defendants argue that they have a reasonable excuse for failing to appear in, and a meritorious defense to, this action (Rybak Aff. [NYSCEF Doc. No. 21], ¶ 2). Specifically, they argue that they failed to appear because of law office failure (*id.*, ¶ 18). They maintain that they were not timely served with the summons and complaint due to a backlog in the offices of the New York Secretary of State (*id.*, ¶¶ 19-20) and that they mistakenly believed that their offices had already commenced litigation of this action in New York Civil Court (*id.*, ¶¶ 21-22). Additionally, the Provider Defendants argue that they have a meritorious defense in this action because State Farm had an obligation under the New York Insurance Law to promptly

pay no-fault claims within 30 days and that State Farm failed to contest or pay the claims within that time. Finally, the Provider Defendants argue that State Farm has failed to comply with this court's order by failing to submit a judgment in this action. State Farm argues that it properly served the complaint and additional copies of the complaint prior to the default judgment being granted (Schreiber Aff. [NYSCEF Doc. No. 30], ¶¶ 18-19). State Farm further argues that the Provider Defendants' motion is untimely and that the delay was not caused by law office failure, but by the failure of the Provider Defendants themselves (*id.*, ¶¶ 28-32). Finally, State Farm argues that the Provider Defendants do not have a meritorious defense because they offer no evidence that Mr. Batista was not using his vehicle for commercial purposes at the time of the Accident in violation of the terms of the Policy (*id.*, ¶¶ 37-43).

### LEGAL CONCLUSIONS

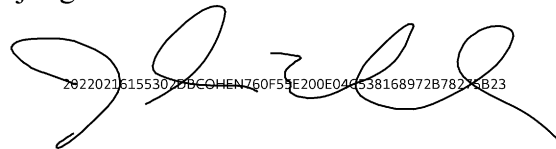
A party seeking to vacate a default judgment must move within one year of the entry of judgment and “must demonstrate a reasonable excuse for the delay, as well as a meritorious defense to the action” (*Rodgers v 66 East Tremont Heights Housing Development Fund Corp.*, 69 AD3d 510, 510 [1st Dept 2010]; *see* CPLR 5015[a][1]). “Under certain circumstances, law office failure may constitute a reasonable excuse, as required to avoid or vacate default judgment. However, claims of law office failure which are conclusory and unsubstantiated cannot excuse default” (*Galaxy General Contracting Corp. v 2201 7<sup>th</sup> Ave. Realty LLC*, 95 AD3d 789, 790 [1st Dept 2012] [internal quotation marks and citation omitted]). If a party fails to demonstrate a reasonable excuse for its delay, “it becomes unnecessary to determine whether a meritorious defense exists” (*id.*).

As an initial matter, the Provider Defendants' motion is untimely. Judgment was entered on December 21, 2017. The Provider Defendants did not move for relief until nearly 3 ½ years

after the entry of judgment against them. The Provider Defendants' excuse of law office failure is also conclusory and unsubstantiated. The claimed backlog at the offices of the New York Secretary of State is not a sufficient basis upon which to claim law office failure in this matter.<sup>1</sup> However, the Provider Defendants further state that their staff may have left the summons and complaint unattended because they believed this claim was being litigated in New York Civil Court. This is a failure of the Provider Defendants themselves, not their attorneys. The Provider Defendants do not allege that their attorneys failed to answer or appear, but rather that their own staff was responsible for such failure. Without any concrete allegations regarding the failure of counsel to appear, the Provider Defendants have failed to demonstrate a reasonable excuse for failure to appear. Thus, this Court need not therefore reach a determination as to the meritorious defense.

Accordingly, it is hereby:

ORDERED that the motion to vacate the default judgment is denied.



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DAVID B. COHEN, J.S.C.

2/16/2022  
DATE

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

<sup>1</sup> Although some decisions have recognized a delay arising from a backlog at the Secretary of State's office to be a factor contributing factor to law office failure (*See, e.g., State Farm Fire & Cas. Co. v Gantt*, 2021 NY Slip Op 31880[U], \*5 [Sup Ct, Kings County 2021]; *Country-Wide Ins. Co. v Fernandez*, 2021 NY Slip Op 31826[U], \*2 [Sup Ct, NY County 2021]), this Court declines to do so here given that the paralegal who submits an affidavit in support of the instant motion does not even note when she contacted the office of the Secretary of State. Thus, her representation regarding any such delay is wholly conclusory.