

Liberty Mut. Ins. Co. v Rios
2022 NY Slip Op 30964(U)
March 21, 2022
Supreme Court, New York County
Docket Number: Index No. 650664/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

LIBERTY MUTUAL INSURANCE COMPANY, LM
 INSURANCE CORPORATION,

Plaintiff,

INDEX NO. 650664/2021

MOTION DATE 03/02/2022

MOTION SEQ. NO. 001

- v -

CAROLYN RIOS, JOSEPHINE VELASQUEZ, 21 CENTURY
 CHIROPRACTIC CARE, ALL COUNTY LLC,ALP SUPPLY
 INC, ALPA SUPPLY INC, BAY PHARMACY 19 INC AKA
 BAY PHARMACY, BETTER HANDS PHYSICAL THERAPY
 PC,BRIDGES PSYCHOLOGICAL SERVICES
 PC,EASTERN MEDICAL PRACTICE PC,GO FLEX REHAB
 PHYSICAL THERAPY PC,JACOBI MEDICAL CENTER,
 JEVA PHYSICAL THERAPY PC,LIFE CHIROPRACTIC
 PC,NEW YORK CITY FIRE DEPARTMENT, NORTH
 BRONX FACULTY PRACTICE CORPORATION, RAOUF
 AKL PT, URSULA SILVA LAC, WINTER PT PC

**DECISION + ORDER ON
 MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for

JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on September 17, 2019 wherein defendants Carolyn Rios (CR) and Josephine Velasquez (JV) were allegedly injured while in a vehicle insured by plaintiff. CR and JV filed a claim with plaintiff as purported injured persons under an insurance policy, number AO523128895870, issued by plaintiff.

Plaintiff commenced this action on or about January 29, 2021, seeking a declaratory judgment against CR, JV, 21 Century Chiropractic Care, All County LLC, Alp Supply Inc, Alpa Supply Inc, Bay Pharmacy 19 Inc Aka Bay Pharmacy, Better Hands Physical Therapy PC, Bridges Psychological Services PC ,Eastern Medical Practice PC, Go Flex Rehab Physical

Therapy PC, Jacobi Medical Center, Jeva Physical Therapy PC, Life Chiropractic PC, New York City Fire Department, North Bronx Faculty Practice Corporation, Raouf Akl Pt, Ursula Silva Lac, and Winter Pt Pc finding that plaintiff is not liable to pay no-fault benefits to the medical provider defendants for medical services allegedly provided to CR and JV because CR materially misrepresented the garaging of the insured vehicle at the time of policy procurement, and both CR and JV have failed to appear for examinations under oath.

On February 23, 2021, defendants Raouf Akl PT, Ursula Silva LAC, Winter PT PC, and Life Chiropractic PC, appeared by counsel and filed an answer.

On April 16, 2021, plaintiff discontinued the action as against Jeva Physical Therapy PC.

On April 23, 2021, defendant New York City Fire department appeared by counsel and filed an answer.

On May 14, 2021, defendant Bay Pharmacy 19 Inc. appeared by counsel and filed an answer.

All other defendants have failed to appear or answer and the time within which the defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendant CR, JV, 21 Century Chiropractic Care, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical Center and North Bronx Faculty Practice Corporation. These 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).

Plaintiff submits in support of the motion, the affirmation of Michelle Dunleavy, Esq., (NYSCEF Doc. No. 13); a copy of the summons and complaint (NYSCEF Doc 15); affidavits of service on the defendants (NYSCEF Doc. No. 16), as well as notice pursuant to CPLR § 3215(g) (NYSCEF Doc. No, 17); nonmilitary affidavits for defendants CR and JV (NYSCEF Doc 18); copies of the answers filed by defendants who have appeared by counsel and stipulations to discontinue (NYSCEF Doc 19); application for benefits (NYSCEF Doc 20); affidavit of the investigator (NYSCEF Doc 21); NF3 forms and Delay letter (NYSCEF Doc 22); Examination under oath scheduling letters (NYSCEF Doc 23 and 24); affidavit of the underwriter (NYSCEF Doc 25); denial of claim forms (NYSCEF Doc 26); the affidavit of Sean Surdich, a claims department manager (NYSCEF Doc. No. 27),

Plaintiff submits a nonmilitary affidavit but fails to submit the Department of Defense Manpower Data Center results. Plaintiff also does not specifically identify any pending arbitration or litigation between the parties, although they seek a permanent stay of the same. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. For these reasons, plaintiff's motion for a default judgment is denied without

prejudice to renewal, on notice to counsel for any defendant and an affidavit listing any pending arbitration or litigation, or a statement affirming that none exists.

CONCLUSION

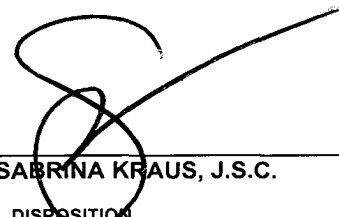
Wherefore, it is hereby

ORDERED that plaintiff’s motion seeking a default judgment against defendants CR, JV, 21 Century Chiropractic Care, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical Center and North Bronx Faculty Practice Corporation is denied without prejudice ; 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 all defendants the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service 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); and it is further

This constitutes the decision and order of the court.

<u>3/21/2022</u> DATE	 SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	