

<b>Safeco Ins. Co. v Soriano</b>
2022 NY Slip Op 31078(U)
March 23, 2022
Supreme Court, New York County
Docket Number: Index No. 653590/2021
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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PRESENT: HON. NANCY BANNON PART 42

Justice

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INDEX NO. 653590/2021

SAFECO INSURANCE COMPANY and AMERICAN STATES INSURANCE COMPANY,

MOTION DATE 03/08/2022

Plaintiffs,

MOTION SEQ. NO. 001

- v -

FRANCISCO SORIANO, SHAWN BROWN, VICENTE ENCARNACION, 101 AVENUE PHYSICAL THERAPY PC, ALBERT GRAZIOSA MD PC, ALL BEST TRADING INC, ATLAS PT PC, BRONX COUNTY ACUPUNCTURE PC, BRONX SC LLC, BURKE PHYSICAL THERAPY PC, CITIMEDICAL I PLLC, COMPREHENSIVE MEDICAL ASSIST PC, DAVID ISRAEL, MD, DOS MANOS CHIROPRACTIC PC, EZ PHARMACY, FRANK SAUCHELLI MD, GO CHIROPRACTIC PC, GUATAM KHAKHAR MD, MEDAID RADIOLOGY LLC, MIISUPPLY LLC, NARRA CHIROPRACTIC PC, NEW YORK CORE CHIROPRACTIC PC, NOURSEEN PT PC, PHYSICAL MEDICINE & REHABILITATION OF NEW YORK, PC, PROTECHMED INC, PURE MIND ACUPUNCTURE PC, RAFAEL SEZAN, RIDGEWOOD DIAGNOSTIC LABORATORY, RIVERSIDE MEDICAL SERVICES PC, SALUTEM PRODUCTS CORP, SEDATION VACATION PRERIOPERATIVE MEDICINE PLLC, SHERMAN ABRAMS LABORATORY INC, SP ONE SERVICES INC, SPINAL HEALTH CHIROPRACTIC PC, SPRUCE MEDICAL & DIAGNOSTIC PC, THROGS NECK MEDICAL SERVICES PC, UNICAST, INC., UNION DME, URGENT PHYSICAL THERAPY PC, and YOU FIRST PHARMACY INC,

DECISION + ORDER ON MOTION

Defendants.

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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, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment action, the plaintiffs move pursuant to CPLR 3215 for leave to enter a default judgment against defendants Francisco Soriano, Shawn Brown, and Vicente Encarnacion (the "individual defendants"), health care service and equipment providers 101 Avenue Physical Therapy PC, Albert Graziosa MD PC, All Best Trading Inc., Atlas PT PC, Bronx County Acupuncture PC, Bronx SC LLC, Burke Physical Therapy PC, Citimedical I PLLC, David Israel, MD, Frank Sauchelli MD, Go Chiropractic PC, Guatam Khakhar MD, Medicaid Radiology LLC, Miisupply LLC, Narra Chiropractic PC, Nourseen PT PC, Physical Medicine & Rehabilitation Of New York PC, Protechmed Inc., Pure Mind Acupuncture PC, Rafael Sezan,

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Ridgewood Diagnostic Laboratory Riverside Medical Services PC, Saludem Products Corp., Sedation Vacation Preroperative Medicine PLLC, Sherman Abrams Laboratory Inc., Throgs Neck Medical Services PC, Union DME, Urgent Physical Therapy PC, You First Pharmacy Inc., Comprehensive Medical Assist PC, Dos Manos Chiropractic PC, EZ Pharmacy, New York Core Chiropractic PC, SP One Services Inc., and Spinal Health Chiropractic PC (the “defaulting medical defendants”) declaring that, pursuant to article 51 of the Insurance Law, the plaintiffs are not obligated to pay no-fault benefits to the individual defendants or to reimburse the defaulting medical defendants for treatment the defaulting medical defendants rendered to the individual defendants for injuries allegedly sustained in a motor vehicle accident. The plaintiffs also move to permanently stay any arbitration proceeding or action at law to recover those benefits. The defendants have not opposed the motion.

Pursuant to a stipulation of discontinuance filed on November 12, 2021, the action is discontinued, with prejudice and without costs, as against defaulting medical defendant Physical Medicine & Rehabilitation of New York PC. Accordingly, the motion is withdrawn as against Physical Medicine & Rehabilitation of New York PC only, and the term “defaulting medical defendants” as used hereinafter shall exclude that entity.

The plaintiffs’ motion is granted, inasmuch as the plaintiffs have provided proof of service of the summons and complaint upon the individual defendants and the defaulting medical defendants, proof of the facts constituting the claim, and proof of the individual defendants’ and the defaulting medical defendants’ defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1<sup>st</sup> Dept 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1<sup>st</sup> Dept 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

In their applications for no-fault benefits, the individual defendants alleged, *inter alia*, that they were injured in a motor vehicle accident on January 29, 2019, and that they thereafter obtained medical treatment or medical supplies from the defaulting medical defendants. According to the plaintiffs, the defaulting medical defendants sought payment, as assignees of the individual defendants, for no-fault benefits under insurance policy number K3324330, issued by the plaintiffs to individual defendant Francisco Soriano under claim numbers 039186753-0009, 039186753-0012, and 039186753-0013. See Insurance Law 5106(a); 11 NYCRR 65-1.1. The plaintiffs submit proof that demonstrates, *prima facie*, that they properly denied coverage on the basis that the no-fault policyholder, individual defendant Francisco Soriano, made material misrepresentations in his initial application for the issuance of the subject insurance policy, which was a personal lines insurance policy, with respect to whether the insured vehicle was used for business purposes, and that the plaintiffs would not have issued the policy had they known that the vehicle was actually used for business purposes. Thus, coverage was vitiated. See Zilkha v Mut. Life Ins. Co. of New York, 287 AD2d 713 (2<sup>nd</sup> Dept. 2001); Penn Mut. Life Ins. Co. v Remling, 268 AD2d 572, 573 (2<sup>nd</sup> Dept. 2000); see also AA Acupuncture Serv., P.C. v Safeco Ins. Co. of Am., 25 Misc. 3d 30 (1<sup>st</sup> Dept. 2009); Ins. Co. of N. Am. v Kaplun, 274 AD2d 293 (2<sup>nd</sup> Dept. 2000); Insurance Law § 3105(b).

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The plaintiffs further establish that they notified the individual defendants to appear for individual Examinations Under Oath (EUO), and that both Shawn Brown and Vicente Encarnacion failed to appear for multiple EUOs, duly scheduled and noticed, thereby violating conditions precedent to coverage. See 11 NYCRR 65-1.1; Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1<sup>st</sup> Dept. 2017); Unitrin Advantage Insurance Company v Bayshore Physical Therapy, PLLC, 82 AD3d 559 (1<sup>st</sup> Dept. 2011).

Accordingly, it is

ORDERED that the plaintiffs' motion pursuant to CPLR 3215 for leave to enter a default judgment as against defendant Physical Medicine & Rehabilitation Of New York PC is deemed withdrawn; and it is further

ORDERED that the plaintiffs' motion pursuant to CPLR 3215 for leave to enter a default judgment as against defendants Francisco Soriano, Shawn Brown, Vicente Encarnacion, 101 Avenue Physical Therapy PC, Albert Graziosa MD PC, All Best Trading Inc., Atlas PT PC, Bronx County Acupuncture PC, Bronx SC LLC, Burke Physical Therapy PC, Citimedical I PLLC, David Israel, MD, Frank Sauchelli MD, Go Chiropractic PC, Guatam Khakhar MD, Medaid Radiology LLC, Miisupply LLC, Narra Chiropractic PC, Nourseen PT PC, Protechmed Inc., Pure Mind Acupuncture PC, Rafael Sezan, Ridgewood Diagnostic Laboratory Riverside Medical Services PC, Saludem Products Corp., Sedation Vacation Preroperative Medicine PLLC, Sherman Abrams Laboratory Inc., Throgs Neck Medical Services PC, Union DME, Urgent Physical Therapy PC, You First Pharmacy Inc., Comprehensive Medical Assist PC, Dos Manos Chiropractic PC, EZ Pharmacy, New York Core Chiropractic PC, SP One Services Inc., and Spinal Health Chiropractic PC is granted, without opposition; and it is further

ADJUDGED and DECLARED that the plaintiff is not obligated to pay no-fault benefits to Francisco Soriano, Shawn Brown, Vicente Encarnacion, 101 Avenue Physical Therapy PC, Albert Graziosa MD PC, All Best Trading Inc., Atlas PT PC, Bronx County Acupuncture PC, Bronx SC LLC, Burke Physical Therapy PC, Citimedical I PLLC, David Israel, MD, Frank Sauchelli MD, Go Chiropractic PC, Guatam Khakhar MD, Medaid Radiology LLC, Miisupply LLC, Narra Chiropractic PC, Nourseen PT PC, Protechmed Inc., Pure Mind Acupuncture PC, Rafael Sezan, Ridgewood Diagnostic Laboratory Riverside Medical Services PC, Saludem Products Corp., Sedation Vacation Preroperative Medicine PLLC, Sherman Abrams Laboratory Inc., Throgs Neck Medical Services PC, Union DME, Urgent Physical Therapy PC, You First Pharmacy Inc., Comprehensive Medical Assist PC, Dos Manos Chiropractic PC, EZ Pharmacy, New York Core Chiropractic PC, SP One Services Inc., and Spinal Health Chiropractic PC pursuant to article 51 of the Insurance Law in connection with the motor vehicle accident that occurred on January 29, 2019, in any action or arbitration proceeding; and it is further

ADJUDGED and DECLARED that all actions, proceedings or arbitrations arising from injuries alleged to have been sustained by the defendants Francisco Soriano, Shawn Brown, and Vicente Encarnacion as a result of the January 29, 2019, accident are permanently stayed, and that the defendants Francisco Soriano, Shawn Brown, Vicente Encarnacion, 101 Avenue Physical Therapy PC, Albert Graziosa MD PC, All Best Trading Inc., Atlas PT PC, Bronx County

Acupuncture PC, Bronx SC LLC, Burke Physical Therapy PC, Citimedical I PLLC, David Israel, MD, Frank Sauchelli MD, Go Chiropractic PC, Guatam Khakhar MD, Medaid Radiology LLC, Miisupply LLC, Narra Chiropractic PC, Nourseen PT PC, Protechmed Inc., Pure Mind Acupuncture PC, Rafael Sezan, Ridgewood Diagnostic Laboratory Riverside Medical Services PC, Saludem Products Corp., Sedation Vacation Preroperative Medicine PLLC, Sherman Abrams Laboratory Inc., Throgs Neck Medical Services PC, Union DME, Urgent Physical Therapy PC, You First Pharmacy Inc., Comprehensive Medical Assist PC, Dos Manos Chiropractic PC, EZ Pharmacy, New York Core Chiropractic PC, SP One Services Inc., and Spinal Health Chiropractic PC are enjoined from commencing any such further actions, proceedings or arbitrations; and it is further

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

3/23/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE