

Country-Wide Ins. Co. v Edwards
2022 NY Slip Op 31108(U)
April 4, 2022
Supreme Court, New York County
Docket Number: Index No. 653531/2021
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

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

- v -

WILLIAM EDWARDS, NORTHWELL HEALTH, INC. F/K/A
NORTH SHORE LIJ MEDICAL P.C., AAAMG LEASING
CORPORATION, ADVANCE ORTHOPEDICS AND JOINT
PRESERVATION P.C., PHYSIOKINETICS PHYSICAL
THERAPY P.C., QL WELL CARE ACUPUNCTURE
P.C., ROMAN ISAAC, MD, PLLC, CERTIFIED NEUROLOGY
CARE, P.C., AMDO MEDICAL, P.C., INTEGRATED PAIN
AND REHABILITATION SOLUTIONS, PLLC, RIDGEWOOD
DIAGNOSTIC LABORATORY, LLC

Defendant.

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INDEX NO. 653531/2021

MOTION DATE 03/15/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for

JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on April 26, 2016 wherein William Edwards (WE) was allegedly injured while in a vehicle insured by plaintiff. WE filed a claim with plaintiff as a purported injured person under an insurance policy, number BS 7716551-15 issued by plaintiff.

Plaintiff commenced this action on or about June 1, 2021, seeking a declaratory judgment against WE, Northwell Health, Inc. F/K/A North Shore LIJ Medical P.C., Aaamg Leasing Corporation, Advance Orthopedics And Joint Preservation P.C., Physiokinetics Physical Therapy P.C., Ql Well Care Acupuncture P.C., Roman Isaac, Md, PLLC, Certified Neurology Care, P.C.,

AMDO Medical, P.C., Integrated Pain And Rehabilitation Solutions, PLLC, And Ridgewood Diagnostic Laboratory, LLC, based upon policy exhaustion.

On July 6, 2021, AAAMG Leasing Corporation appeared by counsel and filed and answer.

On July 8, 2021, plaintiff discontinued the action as against Physiokinetics, P.T. P.C., QI Well Care Acupuncture P.C., And AMDO Medical, P.C.

On July 15, 2021, plaintiff discontinued the action as against Integrated Pain and Rehabilitation Solutions and Certified Neurology Care, P.C.

WE, Northwell Health, Inc. F/K/A North Shore LIJ Medical P.C., Advance Orthopedics And Joint Preservation P.C., Roman Isaac, MD, PLLC, and Ridgewood Diagnostic Laboratory, LLC have failed to appear or file an answer and the time within which defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

On March 15, 2022, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendants WE, Northwell Health, Inc. F/K/A North Shore LIJ Medical P.C., Advance Orthopedics and Joint Preservation P.C., Roman Isaac, MD, PLLC, and Ridgewood Diagnostic Laboratory, LLC. 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 Carl J. Gedeon, Esq., (NYSCEF Doc. No. 22), affidavits of service on the defendants (NYSCEF Doc. No. 24), as well as notice pursuant to CPLR § 3215(g) (NYSCEF Doc. No. 25); the insurance policy declaration page, demonstrating a policy limit of \$50,000 (NYSCEF Doc. No. 26); denial of claim form (NYSCEF Doc. No. 27); the affidavit of Jessica Mena-Sibrian, (NYSCEF Doc. No. 28), who is employed as a No-fault litigation/Arbitration Supervisor. Plaintiff also submits the payment ledger (NYSCEF Doc. No. 29) showing payments made with dates of services rendered.

Plaintiff does not, however, 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 William Edwards, Northwell Health, Inc. F/K/A North Shore LIJ Medical P.C., Advance Orthopedics and Joint Preservation P.C., Roman Isaac, MD, PLLC, and Ridgewood Diagnostic Laboratory, LLC is denied; and it is further

ORDERED the action is dismissed, as the Statute of Limitations has expired; 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.

4/4/2022
DATE


SABRINA KRAUS, J.S.C.

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