

Country-Wide Ins. Co. v Thomas
2022 NY Slip Op 31173(U)
April 5, 2022
Supreme Court, New York County
Docket Number: Index No. 653056/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. SABRINA KRAUS</u>	PART	57TR
	<i>Justice</i>		
-----X		INDEX NO.	<u>653056/2021</u>
COUNTRY-WIDE INSURANCE COMPANY,		MOTION DATE	<u>03/15/2022</u>
Plaintiff,		MOTION SEQ. NO.	<u>001</u>

- v -

AFIA THOMAS, NEW YORK CITY HEALTH AND HOSPITAL CORPORATION, MEDICAL RECORDS RETRIEVAL INC. D/B/A KAMARA SUPPLIES, LENCO DIAGNOSTIC LABORATORIES INC., W. JOSEPH GORUM MD P.C., FRANCOIS JULES PARI SIEN, M.D., P.C., HP MEDICAL P.C., IGOR AMIGUD PHYSICIAN P.C., ALAN BECKLES, M.D, P.C., EXCELL CLINICAL LABORATORY, INC., DYNAMIC SUPPLIERS, LLC, ASTORIA ORGANIX PHARMACY, AVISHAI T. NEUMAN MD PLLC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42.

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on October 26, 2017, wherein Afia Thomas (AF) was allegedly injured while in a vehicle insured by plaintiff. AF filed a claim with plaintiff as a purported injured person under an insurance policy, number BS 7715185 17 issued by plaintiff.

Plaintiff commenced this action on or about May 10, 2021, seeking a declaratory judgment against AF, New York City Health And Hospital Corporation, Medical Records Retrieval Inc. D/B/A Kamara Supplies, Lenco Diagnostic Laboratories Inc., W. Joseph Gorum Md P.C., Francois Jules Parisien, M.D., P.C., HP Medical P.C., Igor Amigud Physician P.C.,

Alan Beckles, M.D, P.C., Excell Clinical Laboratory, Inc., Dynamic Suppliers, LLC, Astoria Organix Pharmacy, and Avishai T. Neuman MD PLLC, based upon policy exhaustion.

On May 17, 2021, Igor Amigud Physician P.C., W. Joseph Gorum Md P.C., and Dynamic Suppliers, LLC appeared by counsel and filed an answer and discovery demands.

On July 1, 2021, AF appeared by counsel and filed an answer.

On January 27, 2022, New York City Health and Hospital Corporation appeared by counsel and filed an answer.

On January 31, 2022, plaintiff discontinued the action as against New York City Health and Hospital Corporation.

Medical Records Retrieval Inc. D/B/A Kamara Supplies, Lenco Diagnostic Laboratories Inc., Francois Jules Parisien, M.D., P.C., HP Medical P.C., Alan Beckles, M.D, P.C., Excell Clinical Laboratory, Inc., Astoria Organix Pharmacy, and Avishai T. Neuman MD PLLC 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 1, 2022, plaintiff moved, pursuant to CPLR §3215, for default judgment against defendants New York City Health And Hospital Corporation, Medical Records Retrieval Inc. D/B/A Kamara Supplies, Lenco Diagnostic Laboratories Inc., Francois Jules Parisien, M.D., P.C., HP Medical P.C., Alan Beckles, M.D, P.C., Excell Clinical Laboratory, Inc., Astoria Organix Pharmacy, and Avishai T. Neuman MD PLLC.

On February 23, 2022, AF filed opposition, taking no position on the motion for a default judgment against the defaulting defendants.

On March 1, 2022, Igor Amigud Physician P.C., W. Joseph Gorum Md P.C., and Dynamic Suppliers, LLC, cross moved to compel plaintiff to provide responses to discovery demands and in opposition to plaintiff's motion for a default judgment.

On March 11, 2022, plaintiff filed opposition to the cross motion and Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC filed reply. The motions are consolidated herein for disposition.

Plaintiff's motion for a default judgment is denied without prejudice

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 a Request for Judicial Intervention in support of the motion for a default judgment (NYSCEF Doc 31). The section of the RJI entitled “Related Cases” is blank. However, a search of court records reveals several pending actions, including a Kings County Civil Court, under index 719330/18/KI, involving plaintiff and Jules Francois Parisein, MD, a defendant herein, where Jules Francois Parisein, MD is represented by counsel, and another Kings county action under index 729376/18/KI, involving plaintiff and Astoria Organix Pharmacy, a defendant herein, where Astoria Organix Pharmacy is represented by counsel. Counsels in those actions were not served with notice of this action or of this motion.

Although not technically required by statute, when a defendant is known to have been 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.

Further, although plaintiff seeks a permanent stay on pending arbitration or litigation between the parties, plaintiff fails to specifically identify any pending arbitration or litigation between the parties. 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.

Defendants Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC cross motion to compel is granted

Defendants Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC cross move, in opposition to plaintiff's motion for a default and for an order compelling plaintiff to respond to the discovery demands dated May 17, 2021.

Plaintiff opposes the cross motion, arguing that it is procedurally defective, as there is no underlying motion against these moving defendants for them to cross move against, and that defendant's discovery demands are overly broad, burdensome, and irrelevant.

Defendants Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC are parties to this action and although plaintiff did not move specifically as to them in requesting a default judgment, it would be a waste of time and judicial resources to deny defendant's motion and cause them to refile. The court has broad discretion in supervising discovery and prefers to advance the discovery process as opposed to stall the same.

CPLR § 3101 “requires full disclosure of all matter material and necessary in the prosecution or defense of an action.” The words ‘material and necessary’ are ‘to be interpreted liberally to require disclosure of . . . any facts bearing on the controversy’ ” (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). A party opposing disclosure bears the burden of establishing that the disclosure sought is improper (*Roman Catholic Church of the Good Shepherd v Tempco Sys.*, 202 AD2d 257, 258 [1st Dept 1994]).

The court finds defendants Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC discovery demands are not overly broad, burdensome, and irrelevant, as they are seeking information regarding plaintiff’s claim that the policy is exhausted.

Wherefore, it is hereby

ORDERED that plaintiff’s motion seeking a default judgment against defendants New York City Health And Hospital Corporation, Medical Records Retrieval Inc. D/B/A Kamara Supplies, Lenco Diagnostic Laboratories Inc., Francois Jules Parisien, M.D., P.C., HP Medical P.C., Alan Beckles, M.D, P.C., Excell Clinical Laboratory, Inc., Astoria Organix Pharmacy, and Avishai T. Neuman MD PLLC is denied without prejudice; and it is further

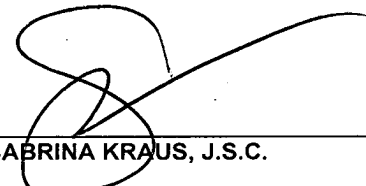
ORDERED that defendants Igor Amigud Physician P.C., W. Joseph Gorum MD P.C., and Dynamic Suppliers, LLC cross motion to compel is granted to the extent that plaintiff, within 30 days of this order, shall produce to defendants responses to the discovery demands previously served; and it is further

ORDERED that the parties are to appear for a virtual status conference on Thursday, June 16, 2022, via MS Teams, an invitation to which will be sent out from the part clerk; 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, including The Rybak Firm, PLLC at 1810 Voorhies Avenue, 3rd Floor Suite 7, Brooklyn, New York 11235, and on Leon Kucherovsky at 115 S Corona Avenue, Valley Stream, New York 11580, and on 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.

4/5/2022 DATE	 SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE