

Liberty Mut. Ins. Co. v Banor
2022 NY Slip Op 31216(U)
April 8, 2022
Supreme Court, New York County
Docket Number: Index No. 652512/2021
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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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 652512/2021
MOTION DATE 03/24/2022
MOTION SEQ. NO. 001

- v -

EMANUEL BANOR, JOSHUA GILEAD, JAMAE MURRAY,
21 CENTURY CHIROPRACTIC CARE, ACHIEVE
PSYCHOLOGICAL SERVICES, PC, ALINA ACUPUNCTURE
PC, ALL CITY FAMILY HEALTHCARE CENTER, INC., ALL
NATIONS DME CORP, ATLANTIC MEDICAL CARE
PC, BAY RIDGE ORTHOPEDIC ASSOCIATES,
P.C., BETTER HANDS PHYSICAL THERAPY, BRIDGES
PSYCHOLOGICAL SERVICES, PC, COMPREHENSIVE
MEDICAL ASSIST P.C., ESMERALDA PHARMACY,
INC., GO FLEX REHAB PHYSICAL THERAPY,
P.C., GREENLEAF CHEMISTS INC., HEAL IT MEDICAL
SUPPLY INC., IRONBOUND MRI, LLC, JEVA PHYSICAL
THERAPY P.C., KV MEDICAL OF NY P.C., LABORATORY
CORPORATION OF AMERICA, Lenco DIAGNOSTIC
LABORATORIES INC., LIFE CHIROPRACTIC
PC, MACINTOSH MEDICAL PC, MAZ SUPPLY
INC., NEXTSTEP HEALING INC., PRIMAVERA PHYSICAL
THERAPY, P.C., QUALITY CARE RX INC., QUALITY MED
EQUIP INC., RENAN MACIAS MD, RIGHT CHOICE
SUPPLY INC., SEDATION VACATION PERIOPERATIVE
MEDICINE, PLLC, SOUTH SHORE OSTEOPATHIC
MEDICINE P.C., TROMBMED NY, INC., UNIVERSAL
BRACE SUPPORT INC.

**DECISION + ORDER ON
MOTION**

Defendant.

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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, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46

were read on this motion to/for

JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on March 22, 2020 wherein defendants Emanuel Banor (EM), Joshua Gilead (JG), and Jamael Murray (JM) were allegedly injured while

in a vehicle insured by plaintiff. EB, JG, and JM filed a claim with plaintiff as purported injured persons under an insurance policy, number AOS-221-191752-70, issued by plaintiff.

Plaintiff commenced this action on or about December 12, 2019, seeking a declaratory judgment against 21 Century Chiropractic Care, Achieve Psychological Services, Pc Alina Acupuncture Pc All City Family Healthcare Center, Inc., All Nations DME Corp, Atlantic Medical Care Pc, Bay Ridge Orthopedic Associates, P.C., Better Hands Physical Therapy, Bridges Psychological Services, Pc Comprehensive Medical Assist P.C., Esmeralda Pharmacy, Go Flex Rehab Physical Therapy, P.C., Greenleaf Chemists Inc, Heal It Medical Supply Inc., Ironbound MRI, LLC, Jeva Physical Therapy P.C., KY Medical Of Ny P.C., Laboratory Corporation Of America, Lenco Diagnostic Laboratories Inc. Life Chiropractic Pc Macintosh Medical Pc, Maz Supply Inc., Nextstep Healing Inc., Primavera Physical Therapy, P.C., Quality Care Rx Inc, Quality Med Equip Inc., Renan Macias Md, Right Choice Supply Inc., Sedation Vacation Perioperative Medicine, PLLC, South Shore Osteopathic Medicine P.C., Trombmed NY, Inc., Universal Brace Support Inc., finding that plaintiff is not liable to pay no-fault benefits to the medical provider defendants for medical services allegedly provided to EB, JG, or JM, as an investigation by plaintiff found the alleged injuries were not causally related to the claimed accident.

On April 19, 2021, All City Family Healthcare Center Inc., appeared by counsel and filed an answer.

On May 3, 2021, Greenleaf Chemists, Inc. appeared by counsel and filed an answer.

On May 10, 2021, plaintiff discontinued as to Renan Macias, MD.

On June 17, 2021, South Shore Osteopathic Medicine, PC, appeared by counsel and filed

an answer.

On June 24, 2021, Alina Acupuncture PC, All City Family Healthcare Center, Inc., Life Chiropractic Pc, And Primavera Physical Therapy, P.C., appeared by counsel and filed an answer, and plaintiff discontinued the action as against Jeva Physical Therapy PC.

On June 26, 2021, Quality Med Equipment, Inc., appeared by counsel and filed an answer.

On July 2, 2021, All Nations DME, Corp., and Comprehensive Medical Assist, PC, 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 defendants Emanuel Banor, Joshua Gilead, Jamael Murray, 21 Century Chiropractic Care, Achieve Psychological Services, PC, Atlantic Medical Care PC, Bay Ridge Orthopedic Associates, P.C. Better Hands Physical Therapy Bridges Psychological Services, PC, Esmeralda Pharmacy, Inc. Go Flex Rehab Physical Therapy, P.C. Heal It Medical Supply Inc. Ironbound MRI, LLC, KY Medical Of NY P.C., Laboratory Corporation of America, Lenco Diagnostic Laboratories Inc., Macintosh Medical PC, Maz Supply Inc., Nextstep Healing Inc., Quality Care Rx Inc Right Choice Supply Inc., Sedation Vacation Perioperative Medicine, PLLC Trombmed NY, Inc., and Universal Brace Support Inc. These defendants have failed to appear or submit opposition.

On March 15, 2022, plaintiff discontinued as to Laboratory Corporation of America and Maz Supply Inc.

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 Richard Ahrens, Esq., (NYSCEF Doc. No. 21); a copy of the summons and complaint (NYSCEF Doc 23); affidavits of service on the defendants (NYSCEF Doc. No. 24), as well as notice pursuant to CPLR § 3215(g) (NYSCEF Doc. No, 25); nonmilitary affidavits for defendants EB, JG, and JM (NYSCEF Doc 26); copies of the answers filed by defendants who have appeared by counsel and stipulations to discontinue (NYSCEF Doc 27 and 28); affidavit of the investigator (NYSCEF Doc 29); examinations under oath (NYSCEF Doc 30, 31 & 32); affidavit from experts (NYSCEF Doc 33 – 38); denial of claim forms (NYSCEF Doc 39); and Team Manager affidavit (NYSCEF 40)

Plaintiff submits nonmilitary affidavits 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 Emanuel Banor, Joshua Gilead, Jamael Murray, 21 Century Chiropractic Care, Achieve Psychological Services, PC, Atlantic Medical Care PC, Bay Ridge Orthopedic Associates, P.C. Better Hands Physical Therapy Bridges Psychological Services, PC, Esmeralda Pharmacy, Inc. Go Flex Rehab Physical Therapy, P.C. Heal It Medical Supply Inc. Ironbound MRI, LLC, KY Medical Of NY P.C., Lenco Diagnostic Laboratories Inc., Macintosh Medical PC, Nextstep Healing Inc., Quality Care Rx Inc Right Choice Supply Inc., Sedation Vacation Perioperative Medicine, PLLC Trombmed NY, Inc., and Universal Brace Support In 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, 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.

4/8/2022
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"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE