

Country-Wide Ins. Co. v Pelage
2022 NY Slip Op 31218(U)
April 7, 2022
Supreme Court, New York County
Docket Number: Index No. 653532/2021
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

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 653532/2021

MOTION DATE 03/22/2022

MOTION SEQ. NO. 001

- v -

CAROLANN PELAGE, JEFFREY COHEN, M.D. & MARK
KRAMER, M.D., P.C., SOUTH NASSAU COMMUNITIES
HOSPITAL, FIVE ELEMENTS ACUPUNCTURE,
P.C., RENAISSANCE CHIROPRACTIC WELLNESS,
P.C., NJ NEURO & PAIN

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on March 24, 2015, wherein Carolann Pelage (CP) was allegedly injured in a vehicle insured by plaintiff. CP filed a claim with plaintiff as a purported injured person under an insurance policy, number CS4520895 14, issued by plaintiff.

Plaintiff commenced this action on or about June 1, 2021, seeking a declaratory judgment against CP, Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C., South Nassau Communities Hospital, Five Elements Acupuncture, P.C., Renaissance Chiropractic Wellness, P.C., And NJ Neuro & Pain based upon policy exhaustion.

CP, Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C., South Nassau Communities Hospital, Five Elements Acupuncture, P.C., Renaissance Chiropractic Wellness, P.C., And NJ

Neuro & Pain 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 22, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants CP, Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C., South Nassau Communities Hospital, Five Elements Acupuncture, P.C., Renaissance Chiropractic Wellness, P.C., And NJ Neuro & Pain.

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 a Request for Judicial Intervention in support of the motion for a default judgment (NYSCEF Doc 19). The section of the RJJ entitled “Related Cases” is blank. However, a search of court records reveals a pending action, a Bronx County Civil Court, under index CV-712668/17/BX, involving plaintiff and Renaissance Chiropractic Wellness, P.C., a defendant herein, where Renaissance Chiropractic Wellness, P.C. is represented by counsel. Another Bronx County Civil Court action is pending, under index CV-712669/17/BX, involving plaintiff and Five Elements Acupuncture, a defendant herein, where Five Elements Acupuncture is

represented by counsel. Counsel in that action was 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.

CONCLUSION

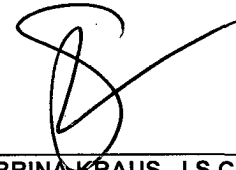
Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants CP, Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C., South Nassau Communities Hospital, Five Elements Acupuncture, P.C., Renaissance Chiropractic Wellness, P.C., And NJ Neuro & Pain. 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, including the Thwaites, Lundgren & D'Arcy at 173 Halstead Avenue, Harrison, New York 10528, 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.



<u>4/7/2022</u> DATE					_____ SABRINA KRAUS, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<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