

Country-Wide Ins. Co. v Nelson
2022 NY Slip Op 31219(U)
April 8, 2022
Supreme Court, New York County
Docket Number: Index No. 653578/2021
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,

INDEX NO. 653578/2021

MOTION DATE 03/22/2022

MOTION SEQ. NO. 001

- v -

TAWANA NELSON, NEW YORK HEALTH AND HOSPITAL CORPORATION D/B/A KINGS COUNTY HOSPITAL CENTER, ALL CITY FAMILY HEALTHCARE, NORTHEAST ANESTHESIA & PAIN MANAGEMENT, CTO MANAGEMENT D/B/A HEALTH EAST AMBULATORY SURGICAL CENTER, APPLE PAIN MANAGEMENT, PLLC, ALEXIOS APAZIDIS, MD, P.C., EXCELL CLINICAL LABORATORY, INC., HOPE ACUPUNCTURE CARE P.C.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on November 10, 2017, wherein Tawana Nelson (TN) was allegedly injured while in a vehicle insured by plaintiff. TN filed a claim with plaintiff as a purported injured person under an insurance policy, number RS8140858 17 issued by plaintiff.

Plaintiff commenced this action on or about June 3, 2021, seeking a declaratory judgment against TN, New York Health And Hospital Corporation D/B/A Kings County Hospital Center, All City Family Healthcare, Northeast Anesthesia & Pain Management, CTO Management D/B/A Health East Ambulatory Surgical Center, Apple Pain Management, PLLC, Alexios Apazidis, MD, P.C., Excell Clinical Laboratory, Inc., And Hope Acupuncture Care P.C., based upon policy exhaustion.

On June 16, 2021, All City Family Healthcare and Excell Clinical Laboratory, Inc. appeared by counsel and filed an answer and discovery demands.

On August 24, 2021, New York City Health and Hospitals Corporation S/H/A New York Health and Hospital Corporation D/B/A Kings County Hospital Center appeared by counsel and filed an answer.

TN, Northeast Anesthesia & Pain Management, CTO Management D/B/A Health East Ambulatory Surgical Center, Apple Pain Management, PLLC, Alexios Apazidis, MD, P.C., and Hope Acupuncture Care P.C., 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 default judgment against defendants TN, Northeast Anesthesia & Pain Management, CTO Management D/B/A Health East Ambulatory Surgical Center, Apple Pain Management, PLLC, Alexios Apazidis, MD, P.C., and Hope Acupuncture Care P.C.

On March 22, 2022, All City Family Healthcare and Excell Clinical Laboratory, Inc. cross moved to compel plaintiff to provide responses to discovery demands and in opposition to plaintiff's motion for a default judgment.

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 27). The section of the RJI entitled “Related Cases” is blank. However, a search of court records reveals several pending actions, including a Bronx County Civil Court, under index 714160/20/BX, involving plaintiff and Northeast Anesthesia & Pain Management, a defendant herein, where Northeast Anesthesia & Pain Management is represented by counsel, and another Bronx County action under index CV-720923/20/BX, involving plaintiff and Health East Ambulatory Surgical Center, a defendant herein, where East Ambulatory Surgical Center is represented by counsel. A third related action, under index CV 4136/18/HU, in Suffolk County, between Alexios Apazidiz, MD, PC, a defendant herein, and plaintiff, where Alexios Apazidiz, MD, P.C. was represented by counsel, settled in 2019. 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 All City Family Healthcare and Excell Clinical Laboratory, Inc. cross motion to compel is granted

Defendants All City Family Healthcare and Excell Clinical Laboratory, Inc. cross move, in opposition to plaintiff's motion for a default and for an order compelling plaintiff to respond to the discovery demands dated June 16, 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. Plaintiff also argues that pursuant to prior arbitration between the parties, defendants' request for discovery is barred by res judicata and collateral estoppel.

Defendants All City Family Healthcare and Excell Clinical Laboratory, Inc 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. In addition, as defendant asserts in the reply papers, plaintiff has offered no proof that the claims in this action are the same claims as were decided in the arbitration, which is necessary to establish a claim for res judicata or collateral estoppel.

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 All City Family Healthcare and Excell Clinical Laboratory, Inc 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 TN, New York Health And Hospital Corporation D/B/A Kings County Hospital Center, All City Family Healthcare, Northeast Anesthesia & Pain Management, CTO Management D/B/A Health East Ambulatory Surgical Center, Apple Pain Management, PLLC, Alexios Apazidis, MD, P.C., Excell Clinical Laboratory, Inc., And Hope Acupuncture Care P.C., is denied without prejudice; and it is further

ORDERED that defendants All City Family Healthcare and Excell Clinical Laboratory, Inc. 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

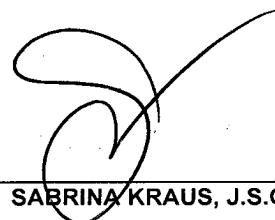
ORDERED that the parties are to appear for a virtual status conference on Thursday, June 16, 2022, via MS Teams, an invitation to which will be sent out from the part clerk; and it is further

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 Law Office of Cohen & Jaffe, LLP at 2001 Marcus Avenue, Suite W295, Lake Success, New York 11042, and on Law Offices of

Gabriel & Shapiro LLC at 3361 Park Avenue, Suite 1000, Wantagh, New York 11793, 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 type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE