

Liberty Mut. Ins. Co. v Rios
2022 NY Slip Op 31898(U)
June 15, 2022
Supreme Court, New York County
Docket Number: Index No. 650664/2021
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>650664/2021</u>
LIBERTY MUTUAL INSURANCE COMPANY, LM INSURANCE CORPORATION,		MOTION DATE	<u>06/09/2022</u>
Plaintiff,		MOTION SEQ. NO.	<u>002</u>

- v -

CAROLYN RIOS, JOSEPHINE VELASQUEZ, 21 CENTURY
CHIROPRACTIC CARE, ALL COUNTY LLC,ALP SUPPLY
INC, ALPA SUPPLY INC, BAY PHARMACY 19 INC AKA
BAY PHARMACY, BETTER HANDS PHYSICAL THERAPY
PC,BRIDGES PSYCHOLOGICAL SERVICES
PC,EASTERN MEDICAL PRACTICE PC,GO FLEX REHAB
PHYSICAL THERAPY PC,JACOBI MEDICAL CENTER,
JEVA PHYSICAL THERAPY PC,LIFE CHIROPRACTIC
PC,NEW YORK CITY FIRE DEPARTMENT, NORTH
BRONX FACULTY PRACTICE CORPORATION, RAOUF
AKL PT, URSULA SILVA LAC, WINTER PT PC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

BACKGROUND

This action arises from an automobile accident on September 17, 2019 wherein defendants Carolyn Rios (CR) and Josephine Velasquez (JV) were allegedly injured while in a vehicle insured by plaintiff. CR and JV filed a claim with plaintiff as purported injured persons under an insurance policy, number AO523128895870, issued by plaintiff.

On March 2, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendant CR, JV, 21 Century Chiropractic Care, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical

Center and North Bronx Faculty Practice Corporation. Defendants failed to appear or submit opposition.

On March 21, 2022, the court denied the motion without prejudice, as plaintiff had failed to provide the results of nonmilitary searches, as well as information on pending arbitration.

On June 9, 2022, plaintiff moved pursuant to CPLR 2221, to renew the motion for a default judgment filed on March 21, 2022.

No opposition was filed by any defendants.

On June 9, 2022, the motion was submitted to this court for determination.

DISCUSSION

Pursuant to CPLR §2221(e), a party may move for leave to renew a prior motion upon presentation of new facts not offered on the prior motion that would change the prior determination of that motion and a reasonable justification for the failure to present such facts.

In support of the motion to renew, plaintiff submits updated nonmilitary affidavits for each of the individual defendants with the Department of Defense Manpower Data Center search results (NYSCEF Doc 38 and 39). In addition, plaintiff submits the affidavit of Christopher Reyes, a Claim Resolution Specialist III employed by plaintiff. Reyes provides the pending arbitration information for each of the Medical Provider defendants in this action.

Plaintiff identifies one (1) pending arbitration between medical provider defendant 21 Century Chiropractic Care and plaintiff. Plaintiff did not serve counsel for 21 Century Chiropractic Care with a courtesy copy 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.

Plaintiff also identifies two pending litigations involving medical provider defendant Bay Pharmacy. The first action identified under index number 729977/20 in Kings County Civil Court, does not involve a party to this action as the assignor in that action is identified as Angel Ortega, who is not a party herein. The second litigation identified by plaintiff, under index 730275/20 in Kings County Civil Court, involves medical provider defendant Bay Pharmacy. In that action, Bay Pharmacy is represented by Gary Tsirelman, Esq. Plaintiff did serve counsel in that action with a courtesy copy of this motion.

Plaintiff has established entitlement to a default judgment as to Carolyn Rios, Josephine Velasquez, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical Center and North Bronx Faculty Practice Corporation

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion to renew for a default judgment is granted as against defendants Carolyn Rios, Josephine Velasquez, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical Center and North Bronx Faculty Practice Corporation; and it is further

ORDERED that plaintiff owes no duty to defendants Carolyn Rios, Josephine Velasquez, All County LLC, Alp Supply Inc, Alpa Supply Inc, Better Hands Physical Therapy PC, Bridges Psychological Services PC, Eastern Medical Practice PC, Go Flex Rehab Physical Therapy PC, Jacobi Medical Center and North Bronx Faculty Practice Corporation to pay No Fault claims

submitted in relation to the September 17, 2019, Policy number AO523128895870, referenced in the complaint involving Carolyn Rios and Josephine Velasquez; it is further

ORDERED that plaintiff's motion is denied without prejudice as to 21 Century Chiropractic Care; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

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 the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that service of this order upon all defendants and the County Clerk and the Clerk of the General Clerk's Office 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), and it is further

This constitutes the decision and order of the court.

6/15/2022
DATE


SABRINA KRAUS, J.S.C.

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