

Liberty Mut. Ins. Co. v Banor
2022 NY Slip Op 31901(U)
June 14, 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 06/03/2022

MOTION SEQ. NO. 002

- v -

EMANUEL BANOR, JOSHUA GILEAD, JAMAEL 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 002) 49, 50, 51, 52, 53
were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

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.

On March 24, 2022, plaintiff moved, 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 failed to appear or submit opposition.

On April 8, 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 3, 2022, plaintiff moved pursuant to CPLR 2221, to renew the motion for a default judgment filed on March 4, 2022.

On May 26, 2022, defendant Atlantic Medical Care PC filed an answer and plaintiff filed a stipulation withdrawing the motion as to them.

On June 1, 2022, plaintiff filed a stipulation withdrawing the motion as to Bay Ridge Orthopedic Associates and agreed to extend their time to answer.

No opposition was filed by any defendants.

On June 3, 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 53). In addition, plaintiff submits the affidavit of Michelle A. Parisi, a Senior Claims Resolution Specialist employed by plaintiff. Parisi provides the pending arbitration information for each of the Medical Provider defendants in this action.

Plaintiff identifies approximately fifty-eight (58) pending arbitrations or litigations between the Medical Provider defendants and plaintiff. In each of those actions the Medical Providers are represented by counsel, however plaintiff has failed to provide notice to counsel in those actions of the pending motion herein. For example, there is a pending Brooklyn County Civil Court action between 21 Century Chiropractic Care, a medical provider defendant in the instant action, and plaintiff under index number 747492/20/KI. In that action 21 Century Chiropractic Care is represented by Kopelevich & Feldsherova PC., who did not received notice of the instant 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. For this reason, plaintiff's motion for a default judgment is denied without prejudice to renewal, on notice to counsel representing any of the defendants in any pending related action.

The nonmilitary affidavits submitted by plaintiff are sufficient and plaintiff is not required to submit the same on any future motion to renew.

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, 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 Kopelevich & Feldsherova, P.C. at 241 37th Street, B439, Brooklyn, New York; Cohen & Jaffe, LLP at 2001 Marcus Avenue, Suite W295, Lake Success, New York; and 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.

6/14/2022
DATE



SABRINA KRAUS, J.S.C.

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