

Liberty Mut. Ins. Co. v Cedeno
2022 NY Slip Op 32373(U)
July 7, 2022
Supreme Court, New York County
Docket Number: Index No. 650448/2021
Judge: Verna L. Saunders
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plaintiffs owe no duty to pay no-fault benefits to defendants LIONEL CEDENO, LEE COAXUM (collectively, “individual defaulting defendants”), and ALL COUNTY LLC, ATLANTIC MEDICAL CARE PC, BETTER HANDS PHYSICAL THERAPY PC, BRONX COUNTY MEDICAL CARE PC, CITIMEDICAL SERVICES PC, GREENLEAF CHEMISTS INC, KRISTINE MAY BITANGA PARACON, DPT, PHYSIO CARE PHYSICAL THERAPY PC, PROVISTA DIAGNOSTICS INC, QUEENS ARTHROSCOPY & SPORTS MEDICINE PC, RAINE M PESIDAS PHYSICAL THERAPY PC, RALPH MEDICAL DIAGNOSTICS PC, RANA UNITED INC, ROMAN ISAAC MD PLLC, SOLOMON HALIOUA MD, TITAN PHARMACY LEVRON INC, and UNIVERSAL BRACE SUPPORT INC (collectively, “defaulting defendants”) on grounds that the individual defendants misrepresented the facts and circumstances of the accident. (NYSCEF Doc. Nos. 1, *summons and complaint*; 16, *notice of motion*).

Despite service of the motion (NYSCEF Doc. No. 35, *affidavit of service*), the defaulting defendants have failed to appear or oppose the motion.

CPLR 3215(a) provides, in pertinent part, that when “a defendant has failed to appear, plead or proceed to trial ... the plaintiff may seek a default judgment against him [or her/they].” To establish his/her/their entitlement to a default judgment, the movant must demonstrate proof of service of the summons and complaint, proof of the facts constituting the claim and proof of the default. (See *PV Holding Corp. v AB Quality Health Supply Corp.*, 189 AD3d 645, 646 [1st Dept 2020]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 417, 317 [1st Dept 2016].) An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. (See *Zelnick v Biderman Indus. U.S.A., Inc.*, 242 AD2d 227, 229 [1st Dept 1997]; *Hazim v. Winter*, 234 AD2d 422, 422 [2d Dept 1996].)

“An insurer may disclaim coverage based upon ‘the fact or founded belief that the alleged injury does not arise out of an insured incident.’” (*State Farm Fire & Cas. Co. v All County, LLC*, 2019 NY Slip Op 33306 [U], *6 [Sup Ct, NY County 2019], quoting *Central Gen. Hosp. v Chubb Group. of Ins. Co.*, 90 NY2d 195, 199 [1997].) To establish its entitlement to a default judgment based on a founded belief, a no-fault insurer need not “establish that the subject collision was the product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence.” (*State Farm Fire & Cas. Co. v All County, LLC*, 2019 NY Slip Op 33306 [U] at *3 [internal quotation marks and citations omitted]; see *V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc 3d 39, 40 [App Term. 2d Dept 2009]). “Rather, the no-fault insurer must demonstrate the facts elicited during an investigation that make up the founded belief” (*State Farm Fire & Cas. Co. v All County, LLC*, 2019 NY Slip Op 33306 [U] at *3), and “[c]ircumstantial evidence is sufficient if a defendant's conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence.” (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005] [internal quotation marks and citation omitted]; see *American Alternative Insurance Corporation v Washington*, 60 Misc 3d 1222[A], (Sup Ct, NY County 2018).

Here, plaintiffs have demonstrated that the defaulting defendants were duly served with process and that additional copies of the pleadings were mailed to them as required by CPLR 3215(g)(4). (NYSCEF Doc. Nos. 20-21, *affidavits of service*). Plaintiffs also annex an affidavit of non-military status for the individual defaulting defendants (NYSCEF Doc. No. 22, *affidavit*). To date, the defaulting defendants have failed to answer, appear, or obtain an order from the court extending their time to do so, and the time to answer or otherwise appear has expired.

As to the facts constituting the claim, plaintiff submits, *inter alia*, the Examination Under Oath (“EUO”) transcripts of LIONEL CEDENO and LEE COAXUM (NYSCEF Doc. Nos. 26-27, *EUO transcripts*), and the affidavit of investigator in the Special Investigations Unit, Jeffrey Kahrman, who affirms that “[t]he facts and circumstances surrounding the accident are indicative of no-fault fraud patterns, specifically a staged accident. Based on the misrepresentation of the facts and circumstances of the accident, Plaintiff timely denied all bills submitted by the Medical Provider Defendants based on the fact that there is no coverage for No-Fault benefits for an incident that was a caused accident.” (NYSCEF Doc. No. 25). Upon review of these and other exhibits annexed to its motion, this court finds that plaintiffs have established the facts constituting the claim. Accordingly, it is hereby

ORDERED that plaintiffs’ motion seeking a default judgment against LIONEL CEDENO, LEE COAXUM, ALL COUNTY LLC, ATLANTIC MEDICAL CARE PC, BETTER HANDS PHYSICAL THERAPY PC, BRONX COUNTY MEDICAL CARE PC, CITIMEDICAL SERVICES PC, GREENLEAF CHEMISTS INC, KRISTINE MAY BITANGA PARACON, DPT, PHYSIO CARE PHYSICAL THERAPY PC, PROVISTA DIAGNOSTICS INC, QUEENS ARTHROSCOPY & SPORTS MEDICINE PC, RAINE M PESIDAS PHYSICAL THERAPY PC, RALPH MEDICAL DIAGNOSTICS PC, RANA UNITED INC, ROMAN ISAAC MD PLLC, SOLOMON HALIOUA MD, TITAN PHARMACY LEVRON INC, and UNIVERSAL BRACE SUPPORT INC is granted, without opposition; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiffs have no duty to pay any no-fault benefits in the forms of sums, monies, damages, awards or benefits to LIONEL CEDENO, LEE COAXUM, ALL COUNTY LLC, ATLANTIC MEDICAL CARE PC, BETTER HANDS PHYSICAL THERAPY PC, BRONX COUNTY MEDICAL CARE PC, CITIMEDICAL SERVICES PC, GREENLEAF CHEMISTS INC, KRISTINE MAY BITANGA PARACON, DPT, PHYSIO CARE PHYSICAL THERAPY PC, PROVISTA DIAGNOSTICS INC, QUEENS ARTHROSCOPY & SPORTS MEDICINE PC, RAINE M PESIDAS PHYSICAL THERAPY PC, RALPH MEDICAL DIAGNOSTICS PC, RANA UNITED INC, ROMAN ISAAC MD PLLC, SOLOMON HALIOUA MD, TITAN PHARMACY LEVRON INC, and UNIVERSAL BRACE SUPPORT INC, their agents, employees, assignees or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover no-fault benefits with respect to the claims submitted by LIONEL CEDENO and/or LEE COAXUM in connection with the February 1, 2020 accident referenced in the complaint; and it is further

ORDERED, ADJUDGED and DECLARED that all no-fault lawsuits, arbitrations, including uninsured motorists, awards and claims filed by LIONEL CEDENO, LEE COAXUM, ALL COUNTY LLC, ATLANTIC MEDICAL CARE PC, BETTER HANDS PHYSICAL

THERAPY PC, BRONX COUNTY MEDICAL CARE PC, CITIMEDICAL SERVICES PC, GREENLEAF CHEMISTS INC, KRISTINE MAY BITANGA PARACON, DPT, PHYSIO CARE PHYSICAL THERAPY PC, PROVISTA DIAGNOSTICS INC, QUEENS ARTHROSCOPY & SPORTS MEDICINE PC, RAINE M PESIDAS PHYSICAL THERAPY PC, RALPH MEDICAL DIAGNOSTICS PC, RANA UNITED INC, ROMAN ISAAC MD PLLC, SOLOMON HALIOUA MD, TITAN PHARMACY LEVRON INC, and UNIVERSAL BRACE SUPPORT INC in connection with the February 1, 2020 accident referenced in the complaint are hereby stayed; and it is further

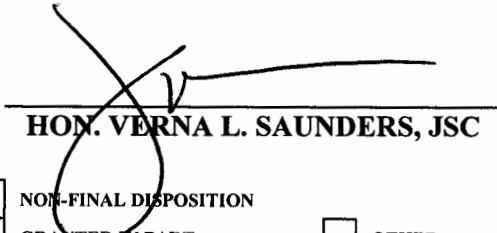
ORDERED that this judgment shall have no effect as to the appearing defendants; and it is further,

ORDERED that, within twenty (20) days after this ordered is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this order, with notice of entry, upon all defendants, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of the Court 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).

This constitutes the decision and order of this court.

July 7, 2022


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: