

**State Farm Mut. Auto. Ins. Co. v Elmwood Park Med.  
Group, P.C.**

2022 NY Slip Op 32763(U)

August 11, 2022

Supreme Court, Kings County

Docket Number: Index No. 524431/2019

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part DJMP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11<sup>th</sup> day of August, 2022.

PRESENT:

HON. RICHARD J. MONTELIONE  
Justice.

STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY and STATE FARM FIRE AND  
CASUALTY COMPANY,

Plaintiffs,

-against-

ELMWOOD PARK MEDICAL GROUP, P.C.,

Defendant.

Decision and Order

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Motion Seq. 1 & 2

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

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Opposing Affidavits (Affirmations) \_\_\_\_\_

Affidavits/ Affirmations in Reply \_\_\_\_\_

Other Papers: \_\_\_\_\_

Upon the foregoing papers, in this action to disclaim any payment obligations to the defendant, for its claims in excess of \$115,109.56 for healthcare services that were allegedly rendered to individuals who were involved in automobile accidents and eligible for coverage under SFMAIC and SFFCC automobile insurance policies in New York; plaintiffs move for an Order pursuant to CPLR §3215 granting plaintiffs, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY, a default judgment against the defendant ELMWOOD PARK MEDICAL GROUP, P.C., based upon its failure/refusal to appear for an Examination Under Oath (EUO) or answer the complaint. Defendant cross-moves to vacate the default and compel plaintiffs to accept its answer.

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Plaintiff presented proof that the defendant was served and that defendant failed to appear for its scheduled Examination Under Oath, though duly noticed and re-noticed, thus failing to satisfy the contractual pre-condition for coverage.

A motion for a default judgment for a defendant's failure to appear and answer must address three categories of proof--service of process upon the defendant, the failure of the defendant to appear or answer, and the merits of the plaintiff's claim. Here plaintiff provided an affidavit from a process server stating that the defaulting party was properly served, on August 20, 2020 via service upon the New York Secretary of State under and pursuant to Section 306 of the New York Business Corporation Law, which is presumptive evidence of the facts contained therein (*Kolonkowski v Daily News, L.P.*, 94 A.D.3d 704, 941 N.Y.S.2d 663 [2d Dep't. 2012]); proof of the defendants' defaults, by affirmation of plaintiff's counsel that no answer has been received within the statutory time allowed (*Gray v Doyle*, 170 A.D.3d 969, 96 N.Y.S.3d 304 [2d Dep't. 2019]) and party affirmations providing sufficient proof to enable the court to determine that the claim is viable (*Oteri v Oteri-Harkins*, 183 A.D.3d 902, 903, 122 N.Y.S.3d 915 [2d Dep't. 2020]; *PE-NC, LLC v Gonzalez*, 172 A.D.3d 1394, 102 N.Y.S.3d 232 [2d Dep't. 2019]).

It is well settled that there is a strong public policy favoring resolution of actions on their merits. See e.g., *Cortlandt Healthcare, LLC v Gantt*, 54 A.D.3d 799, (2d Dept 2008); *Friedman, Harfenist, Langer & Kraut v Rosenthal*, 79 A.D.3d 798 (2d Dept 2010); *Balint v Mañne Midland Bank, N A.*, 112 A.D.2d 1023 (2d Dept 1985); *Marmo v Gebbia*, 294 A.D.2d 411 (2d Dept 2002). This is especially true (in light of the overwhelming preference that disputes be resolved on their merits), where the defendant did not intend to abandon the defense of the action, and there is no resulting prejudice to plaintiff. *Harcztark v Drive Vañety, Inc.*, 21 A.D.3d 876, 878 (2d Dept 2005) (holding that a defendant's default should be excused in the absence of any prejudice to the plaintiff, the lack of willfulness on the part of the defendants, and the public policy in favor of resolving cases on the merits); *Rickert v Chestara*, 56 A.D.3d 941 (3d Dept 2008). *Global Liberty Ins. Co. v Haar Orthopaedics & Sports Med., P.C.*, 170 A.D.3d 1125, 97 N.Y.S.3d 249 [2d Dep't. 2019].

Here, in its cross-motion in opposition to the motion, defendant presented a good faith argument that an EUO was not required in this matter based upon advice from its attorney. Plaintiffs were advised of the objections, and defendant did not blanketly refuse to appear or ignore the requests. Moreover, defendant's failure to answer was not intentional. Defendant avers that as there are numerous lawsuits commenced by it against plaintiffs in Civil Court regarding the same unpaid claims that are the subject of the present action, and it did not realize that the papers served in this action were the

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initiation of a new suit as opposed to items filed in the other actions between the parties. In any event, there is no prejudice to the plaintiffs in this matter as the issues in this suit are also being litigated in the approximately 40 lawsuits brought by defendant.

A party seeking to vacate a default must demonstrate both a reasonable excuse for the default and the existence of a meritorious claim or defense (see, *Matter of Gambardella v. Ortov Lighting*, 278 A.D.2d 494 (2d Dept 2000); *Parker v. City of New York*, 272 A.D.2d 310 (2d Dept 2000)). Here defendant satisfied both criteria.

Nevertheless, although defendant was advised that an EUO was not required, plaintiffs have demonstrated that they are entitled to conduct Examinations Under Oath with regard to the subject claims pursuant to 11 N.Y.C.R.R. § 65-3.5(c), stating that an insurer is expressly permitted "to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." Additional verification includes all information that is necessary for the insurer to determine whether the claim submitted by the healthcare provider is payable. See *Nyack Hosp. v. General Motors Acceptance Corp.*, 27 A.D.3d 96, 808 N.Y.S.2d 399 (2d Dept 2005). Furthermore, in *State Farm Mut. Auto. Ins. Co. v. Mallela*, 4 N.Y.3d 313, 794 N.Y.S.2d 700 (2005), the court made it clear that State Farm may look beyond the facially-valid licensing information provided to determine whether Elmwood Park Medical is in compliance with state and local licensing laws. State Farm is not required to disclose its objective basis for seeking verification from the Provider. See New York Department of Insurance General Counsel Opinions, Opinion No. 02-10-14, 2002 N.Y. Insurance GC Opinions LEXIS 311 (Oct. 15, 2002); *Actual Chiropractic, P.C. v. State Farm Ins.*, 2019 NY Slip Op 50421(U) (App. Term. 2d Dept. 2019); *Bronx Chiropractic Care, P.C. v. State Farm Ins.*, 2019 NY Slip Op 50423(U) (App. Term. 2d Dept. 2019).

Accordingly, it is

**ORDERED**, that plaintiffs' motion for a default judgment is granted to the extent that defendant is to appear for Examinations Under Oath on such dates as the parties arrange to be held within 60 days of the filing of this order on NYSCEF; and it is further

**ORDERED**, that portion of plaintiffs' motion seeking a judgment of default is denied; and it is further

**ORDERED**, that defendants cross-motion is granted to the extent that the default is vacated and the defendant's answer is deemed served; and it is further


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**ORDERED**, that plaintiffs may make such further motions as may be appropriate if defendant fails to appear for EUOs pursuant to this order.

Any additional relief requested and not specifically granted herein is denied.

This constitutes the decision of the court.

ENTER



HON. RICHARD J. MONTELIONE, J.S.C.