

State Farm Fire & Cas. Co. v Advanced Recovery Equip. & Supplies, LLC
2022 NY Slip Op 32896(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 158584/2021
Judge: Dakota D. Ramseur
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAKOTA D. RAMSEUR

PART

34M

Justice

-----X

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

INDEX NO. 158584/2021MOTION DATE 06/15/2022MOTION SEQ. NO. 001

ADVANCED RECOVERY EQUIPMENT AND SUPPLIES,
LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX
PHARMACY, INC., BL PAIN MANAGEMENT,
PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL,
P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING,
M.D., EAST COAST MED GROUP, INC., EXACT
ORTHOMED, INC., EXPERT PHARMACY, INC., FLORAL
MED SUPPLY, INC., FLORAL PARK DRUGS, INC., FRANK
ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA
PHYSICAL THERAPY, PLLC, GOOD MEDICA, INC., HANK
ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC.,
IDEAL CARE PHARMACY, INC., ISLAND AMBULATORY
SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE
PRODUCTS CORP., LENCO DIAGNOSTIC LABORATORY,
INC., MARK L RITCH D.O., P.A., METRO CHEMISTS
PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW
AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR,
INC., PEDRO TORRES-JIMENEZ MD, P.C., PRECISE
MEDICAL SOLUTIONS, LLC, QS MEDICAL SERVICES,
P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY,
INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC
OF ROCKAWAY BEACH, SEDATION VACATION
PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY,
P.C., SURGIMED CARE, INC., TMVQS CORP. D/B/A
TRINITY PHARMACY, WILLIAM L. KING, M.D.,
P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA
MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, AKIM
PLUMMER, ROLANDO ROBERTS, KENEISHA S. KERR-
PALMER

Defendant.

**ORDER - AMENDED (MOTION
RELATED)**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127

were read on this motion to/for

JUDGMENT - DEFAULT

Plaintiff, STATE FARM FIRE AND CASUALTY COMPANY (plaintiff), commenced this action seeking, among other things, a declaration that it does not owe a duty to pay for No-Fault benefits arising out of an alleged February 20, 2021 motor vehicle accident involving

claimants/co-defendants, DWAYNE MACFARLANE (MacFarlane), AKIM PLUMMER (Plummer) ROLANDO ROBERTS (Roberts), and KENEISHA S. KERR-PALMER (collectively, the Claimants). Plaintiff now moves: 1) pursuant to CPLR 3215 for a default judgment against the non-appearing co-defendants, ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX PHARMACY, INC., BL PAIN MANAGEMENT, PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL, P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING, M.D., EAST COAST MED GROUP, INC., EXACT ORTHOMED, INC., EXPERT PHARMACY, INC., FLORAL PARK DRUGS, INC., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA PHYSICAL THERAPY, PLLC, GOOD MEDICA, INC., HANK ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC., ISLAND AMBULATORY SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE PRODUCTS CORP., Lenco DIAGNOSTIC LABORATORY, INC., METRO CHEMISTS PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR, INC., PEDRO TORRES-JIMENEZ MD, P.C., QS MEDICAL SERVICES, P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY, INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC OF ROCKAWAY BEACH, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY, P.C., SURGIMED CARE, INC., WILLIAM L. KING, M.D., P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, and AKIM PLUMMER¹ (collectively, the defaulting defendants); 2) a declaration that plaintiff is not obligated to honor or pay claims for reimbursement arising under auto policy claim number 32-16V6-55M; 3) to stay all proceedings for the underlying accident involving plaintiff and the aforesaid defaulting defendants; and 4) for leave pursuant to CPLR 3025(b) to amend the complaint to add EXPRESS RECOVERY, INC. and LSL MOBILE, INC. as additional defendants. The motion is unopposed. For the following reasons, plaintiff's motion is granted.

CPLR 3215(f) requires a movant seeking default judgment to submit the following proofs: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of the facts constituting the claim; and (3) an affidavit showing the default in answering or appearing. Here, plaintiff demonstrates its entitlement to a default judgment pursuant to CPLR 3215, as plaintiff served the summons and compliant upon the defaulting defendants, that the defaulting defendants failed to answer, and as discussed below, the meritorious nature of plaintiff's claims.

A No-Fault insurer “[m]ay assert a lack of coverage defense premised on the fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). A No-Fault insurer is “[n]ot required to 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” (*VS. Med Sews. P.C. v Allstate Ins. Co.*, 25 Misc3d 39 [App Term, 2d Dept 2009, 2nd, 11th & 13th Jud Dists]). “Circumstantial 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*

¹ Pursuant to the June 7, 2022 stipulation of partial withdrawal, plaintiff withdraws the motion against EXACT ORTHOMED, INC. and GOOD MEDICA, INC.

Commc'ns. Inc., 21 AD3d 864, 865 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779 [3d Dept 2000]).

By way of background, the Claimants alleged that they were injured in a February 20, 2021 motor vehicle accident while occupants of a 2004 Nissan Quest, a vehicle insured by plaintiff in the name of Palmer and operated by Palmer (the insured vehicle). According to the record, the alleged motor vehicle accident occurred when the insured vehicle was hit on its rear and passenger side by a commercial truck Freightliner tractor-trailer operated by non-party Winston Danvers (Danvers) at the intersection of North Conduit and Cohancy Street, Queens, New York.

According to plaintiff's investigation of the claim, Danvers indicates that he saw the insured vehicle driving slowly on the side of the road with its flashers on prior to the loss. The insured vehicle then pulled up to the side of Danvers vehicle at a stoplight. Danvers states that when the light turned green, the insured vehicle attempted to cause an accident by pulling in front of his truck and stopping, so that he would drive into it. Danvers indicates that as the insured vehicle drove in front of Danvers' vehicle, Danvers observed a male sitting in the front passenger seat who was gesturing and pointing in front of Danvers' vehicle. Danvers indicates that the insured vehicle partially drove in front of my truck and stopped. According to Danvers, he did not move his vehicle, that his vehicle did not make contact with the insured vehicle, and that the front passenger side of the insured vehicle was only slightly in the path of Danvers' vehicle.

Plaintiff also conducted a "Lange" Collision Damage Analysis Report, wherein an examiner performed a physical inspection of the insured vehicle. Plaintiff's Lange report concluded that none of the damage presented on the insured vehicle was the result of a collision event with Danvers' vehicle. Plaintiff's Lange report noted that the damage was clearly pre-existing and contained rust, which could not have occurred between the time of the alleged collision and the time of the photographs. The insurance carrier for the vehicle operated by Danvers also conducted a Lange analysis report, revealing that the damage in the forward area of the sliding door and rear edge of the forward door of the insured vehicle included rust and deterioration inconsistent with the collision event allegedly occurring minutes before the photographs were taken. The insurance carriers' report concluded that "the damage present on the passenger side of the [insured vehicle] is not the result of collision forces applied by the Freightliner tractor-trailer during a collision caused or otherwise initiated by the Freightliner" (NYSCEF doc. no. 109).

Moreover, the EUO testimonies of Palmer, MacFarlane, Plummer and Roberts contained notable inconsistencies, including the reason for the Claimants being in the insured vehicle at the time, Roberts' reason for adjourning his EUO, that Roberts' account of the incident at his EUO was scripted, the parties testimony concerning documentation of the alleged accident, and the parties testimony concerning the events immediately after leaving the scene of the accident, including the order of which parties were dropped off and where they were dropped off. Further, despite claiming significant injuries, the Claimants did not go to a hospital for their injuries. Moreover, as part of plaintiff's investigation, plaintiff discovered MacFarlane's history of prior

losses, including losses on March 14, 2020, July 11, 2019, January 6, 2019, March 21, 2018 and December 5, 2016.

In light of the above, it can be reasonably inferred from the evidence that plaintiff had a founded belief that the injuries claimed were not causally related to the February 20, 2021 incident and/or did not arise from the accident.

A motion to amend the complaint should be freely granted unless the proposed amendment is palpably insufficient to state a cause of action, patently devoid of merit (*Bishop v Maurer*, 83 AD3d 483 [1st Dept 2011]). Here, plaintiff establishes that it received medical bills seeking No-Fault reimbursement from EXPRESS RECOVERY, INC. and LSL MOBILE, INC. for medical services allegedly provided to the Claimants. Thus, there is no opposition to the motion, and thus, no showing of prejudice to the nonmoving parties, the branch of plaintiff's motion for leave to amend the complaint is granted.

Accordingly, it is hereby

ORDERED that plaintiff STATE FARM FIRE AND CASUALTY COMPANY's motion for default judgment as against defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX PHARMACY, INC., BL PAIN MANAGEMENT, PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL, P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING, M.D., EAST COAST MED GROUP, INC., EXPERT PHARMACY, INC., FLORAL PARK DRUGS, INC., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA PHYSICAL THERAPY, PLLC, HANK ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC., ISLAND AMBULATORY SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE PRODUCTS CORP., LENCO DIAGNOSTIC LABORATORY, INC., METRO CHEMISTS PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR, INC., PEDRO TORRES-JIMENEZ MD, P.C., QS MEDICAL SERVICES, P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY, INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC OF ROCKAWAY BEACH, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY, P.C., SURGIMED CARE, INC., WILLIAM L. KING, M.D., P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, and AKIM PLUMMER is granted; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiff STATE FARM FIRE AND CASUALTY COMPANY, or any of its affiliates or subsidiaries, has no duty to pay any No-Fault benefits, in the form of sums, monies, damage, awards, or benefits to ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX PHARMACY, INC., BL PAIN MANAGEMENT, PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL, P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING, M.D., EAST COAST MED GROUP, INC., EXPERT PHARMACY, INC., FLORAL PARK DRUGS, INC., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA PHYSICAL THERAPY, PLLC, HANK ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC., ISLAND AMBULATORY SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE PRODUCTS CORP., LENCO DIAGNOSTIC LABORATORY, INC., METRO

CHEMISTS PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR, INC., PEDRO TORRES-JIMENEZ MD, P.C., QS MEDICAL SERVICES, P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY, INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC OF ROCKAWAY BEACH, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY, P.C., SURGIMED CARE, INC., WILLIAM L. KING, M.D., P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, and AKIM PLUMMER is granted; and it is further

ADJUDGED and DECLARED that all actions, proceedings or arbitrations arising from injuries alleged to have been sustained by the claimants as a result of the alleged February 20, 2021, accident arising under auto policy claim number 32-16V6-55M are stayed, and that the defaulting defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX PHARMACY, INC., BL PAIN MANAGEMENT, PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL, P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING, M.D., EAST COAST MED GROUP, INC., EXPERT PHARMACY, INC., FLORAL PARK DRUGS, INC., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA PHYSICAL THERAPY, PLLC, HANK ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC., ISLAND AMBULATORY SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE PRODUCTS CORP., Lenco DIAGNOSTIC LABORATORY, INC., METRO CHEMISTS PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR, INC., PEDRO TORRES-JIMENEZ MD, P.C., QS MEDICAL SERVICES, P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY, INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC OF ROCKAWAY BEACH, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY, P.C., SURGIMED CARE, INC., WILLIAM L. KING, M.D., P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, and AKIM PLUMMER, and are enjoined from commencing any such further actions, proceedings or arbitrations; and it is further

ORDERED that the Clerk is directed to enter default judgment in favor of plaintiff STATE FARM FIRE AND CASUALTY COMPANY as against the defaulting defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC, AN PHYSICIAN ASSISTANT, P.C., ANCHOR RX PHARMACY, INC., BL PAIN MANAGEMENT, PLLC, CREATIVE ACUPUNCTURE, P.C., CVAP MEDICAL, P.C., D & S PHARMACY, LLC, VINCENT S. DOWLING, M.D., EAST COAST MED GROUP, INC., EXPERT PHARMACY, INC., FLORAL PARK DRUGS, INC., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GAMMA PHYSICAL THERAPY, PLLC, HANK ROSS MEDICAL, P.C., HEAL IT MEDICAL SUPPLY, INC., ISLAND AMBULATORY SURGERY CENTER, L.L.C., JR MEIDICAL, P.C., KORGE PRODUCTS CORP., Lenco DIAGNOSTIC LABORATORY, INC., METRO CHEMISTS PHARMACY, INC., MJG MEDICAL SERVICES, P.C., NEW AGE MEDICAL P.C., NYEEQASC, LLC, OLD STAR, INC., PEDRO TORRES-JIMENEZ MD, P.C., QS MEDICAL SERVICES, P.C., QUALITY CARE RX, INC., RIGHT CHOICE SUPPLY, INC., ROCKAWAYS ASC DEVELOPMENT, LLC A/K/A ASC OF ROCKAWAY BEACH, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY, P.C., SURGIMED CARE, INC., WILLIAM L. KING, M.D.,

P.C., WILSON PRIMARY MEDICAL CARE, P.C., ZAKARIA MEDICAL SERVICE, P.C., DWAYNE MACFARLANE, and AKIM PLUMMER; and it is further

ORDERED that plaintiff shall serve a copy of the proposed supplemental summons and amended complaint in the proposed form annexed to the moving papers (NYSCEF doc. no. 118) upon all parties within twenty (20) days; and it is further

ORDERED that plaintiff shall serve a copy of this order, with notice of entry, upon defendants and The Trial Support Office within ten (10) days; and it is further

ORDERED that defendants shall serve an answer to the amended complaint or otherwise move within twenty (20) days from the date of said service; and it is further

ORDERED that a virtual conference shall take place on November 15, 2022 at 12:00 p.m.

8/25/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐

CASE DISPOSED

☒

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

DAKOTA D. RAMSEUR, J.S.C.