

**State Farm Mut. Auto. Ins. Co. v ARS Med. Equip.
Corp.**

2022 NY Slip Op 33262(U)

September 27, 2022

Supreme Court, New York County

Docket Number: Index No. 158930/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33

Justice

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INDEX NO. 158930/2021

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

MOTION DATE 06/17/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

ARS MEDICAL EQUIPMENT CORP., NYC SOUTHERN BLVD MEDICAL, P.C., CMA PSYCHOLOGY, P.C., NEW YORK RECOVERY PT, P.C., LIGHT TOUCH CHIROPRACTIC, P.C., IRONBOUND MRI, L.L.C., PK MODERN ACUPUNCTURE, P.C., RO MEDICAL CARE, P.C., SUNNYSIDE CHEMISTS, INC., I AM SUPPLIES, INC., METRO PAIN SPECIALISTS, P.C., ADVANCED COMPREHENSIVE LABORATORY, LLC D/B/A TOPLAB, INC., TOPLAB, CHAND MEDICAL, P.C., RAF SPORTS CHIROPRACTIC, P.C., COMPLETE EXPRESS MEDICAL, P.C., INERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK, P.L.L.C., REFUAH DIAGNOSTICS, L.L.C., HEALTHY BIG APPLE CHIROPRACTIC, P.C., ACCESS CARE PT, P.C., WELLNESS MEDICAL OF CORONA, P.C., IGOR MAYZENBERG, L.AC., STAY WELL CHIROPRACTIC, P.C., APEX MEDICAL, P.C., FULL PSYCHOLOGY, P.C., WILSHIRE CHIROPRACTIC, P.C., JAN SCHREUDER, M.D., P.C., SIMPLY DME, L.L.C., BISOMA PHARMACY, INC., ASG RX CORP., IDEAL CARE PHARMACY, INC., DANIEL DRAPACZ DPM, P.C., BV PHYSICAL THERAPY, P.C., RX MASTERS, INC., METROPOLITAN MEDICAL & SURGICAL, P.C., QUALITY ORTHOPEDIC AND COMPLETE JOINT CARE, P.C., VW SURG SUPPLY, INC., FLUSHING MEDICAL SUPPLY, INC., AMIT KHANEJA NEUROLOGY PRACTICE, P.L.L.C., MYEHM RX, INC., SOUTH SHORE CHIROPRACTIC, P.C., BETTER HEALTH CHIROPRACTIC, P.C. A/K/A BHC CHIROPRACTIC, AVK RX, INC., WILLIAM COOPER, D.C., BRIARWOOD RX, INC., MILLENNIUM PHARMACY, INC., COMPLETE NEUROPSYCHOLOGY, P.C., ALL HEALTH DME, INC., NJS PHYSICAL MEDICINE AND REHABILITATION, P.C., NYU FACULTY GROUP PRACTICE, AMA SUPPLY, INC., EMMONS AVENUE MEDICAL OFFICE, P.C., PROCARE MEDICAL EQUIPMENT, L.L.C., AMSTERDAM 2020 PHARMACY RX, INC., NEXRAY MEDICAL IMAGING, P.C., TOP CHOICE PHARMACY CORP., MILLENNIUM AMBULATORY SURGERY CENTER, L.L.C., DR. OFFENBACHER MEDICAL IMAGING, PLLC, THIRSTTON GEORGE, JUBAR JONES, JUNIOR JEAN-GILES,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, good cause having been shown, there being no opposition, and oral argument, which took place on September 27, 2022, where Lochlan J. McDonnell, Esq. appeared on behalf of Plaintiff State Farm Mutual Automobile Insurance Company, the motion for default judgment is granted.

This is an action arising from an alleged motor vehicle collision on July 3, 2020 (NYSCEF Doc. 1). The insured, Defendant Thirstton George (“George”), who was involved in the accident, is alleged to have failed to appear for an examination under oath (“EUO”) in contravention of 11 N.Y.C.R.R. 65-3.5(c). Additionally, it is alleged that George refused to produce a drivers license to Plaintiff when requested, and that George listed a different address on the policy from the address where the covered automobile was registered. As such, Plaintiff commenced this action seeking declaratory judgment that they have no duty to pay No-Fault claims of any Defendant with respect to the July 3, 2020 collision.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulter’s failure to appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of a motion for default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that “defaulters are

deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

Plaintiff alleges that the defaulting defendants are not entitled to no-fault coverage because the alleged loss did not arise out of an insured incident. A no-fault insurer may disclaim coverage based upon “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]). Moreover, pursuant to 11 N.Y.C.R.R. 65-3.5(c), an insurer is entitled to all items necessary to verify the claim directly from the parties from whom such verification is requested. Here, it is alleged that George failed to appear for his EUO and produce his drivers’ license during Plaintiff’s investigation into the alleged accident. This constitutes a violation of 11 N.Y.C.R.R. 65-3.5(c), and the non-answering Defendants’ failure to appear, despite proper service, warrants granting default judgment.

Accordingly, it is hereby,

ORDERED, ADJUDGED AND DECLARED that plaintiff’s motion for default judgment is granted and the plaintiff has no duty to pay any No-Fault benefits in the form of sums, monies, damages, awards, judgments, or benefits to ARS MEDICAL EQUIPMENT CORP., NYC SOUTHERN BLVD MEDICAL, P.C., CMA PSYCHOLOGY, P.C., NEW YORK RECOVERY PT, P.C., LIGHT TOUCH CHIROPRACTIC, P.C., IRONBOUND MRI, L.L.C., PK MODERN ACUPUNCTURE, P.C., RO MEDICAL CARE, P.C., SUNNYSIDE CHEMISTS, INC., I AM SUPPLIES, INC., METRO PAIN SPECIALISTS, P.C., ADVANCED COMPREHENSIVE LABORATORY, L.L.C. d/b/a TOPLAB, TOPLAB, RAF SPORTS CHIROPRACTIC, P.C., COMPLETE EXPRESS MEDICAL, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK, P.L.L.C., REFUAH DIAGNOSTICS, L.L.C., HEALTHY BIG APPLE

CHIROPRACTIC, P.C., ACCESS CARE PT, P.C., WELLNESS MEDICAL OF CORONA, P.C., IGOR MAYZENBERG, L.AC., STAY WELL CHIROPRACTIC, P.C., APEX MEDICAL, P.C., FULL PSYCHOLOGY, P.C., WILSHIRE CHIROPRACTIC, P.C., JAN SCHREUDER, M.D., P.C., SIMPLY DME, L.L.C., BISOMA PHARMACY, INC., ASG RX CORP., DANIEL DRAPACZ DPM, P.C., BV PHYSICAL THERAPY, P.C., RX MASTERS, INC., METROPOLITAN MEDICAL & SURGICAL, P.C., QUALITY ORTHOPEDIC AND COMPLETE JOINT CARE, P.C., VW SURG SUPPLY, INC., FLUSHING MEDICAL SUPPLY, INC., AMIT KHANEJA NEUROLOGY PRACTICE, P.L.L.C., MYEHM RX, INC., SOUTH SHORE CHIROPRACTIC, P.C., BETTER HEALTH CHIROPRACTIC, P.C. a/k/a BHC CHIROPRACTIC, AVK RX, INC., WILLIAM COOPER, D.C., BRIARWOOD RX, INC., MILLENNIUM PHARMACY, INC., COMPLETE NEUROPSYCHOLOGY, P.C., ALL HEALTH DME, INC., NJS PHYSICAL MEDICINE AND REHABILITATION, P.C., NYU FACULTY GROUP PRACTICE, AMA SUPPLY, INC., EMMONS AVENUE MEDICAL OFFICE, P.C., PROCARE MEDICAL EQUIPMENT, L.L.C., AMSTERDAM 2020 PHARMACY RX, INC., NEXRAY MEDICAL IMAGING, P.C., TOP CHOICE PHARMACY CORP., MILLENNIUM AMBULATORY SURGERY CENTER, L.L.C., DR. OFFENBACHER MEDICAL IMAGING, P.L.L.C., THIRSTTON GEORGE, and JUNIOR JEAN-GILES, 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 collision that occurred on July 3, 2020, referenced in the complaint, and referenced by claim number 52-08R1-49Q, and it is further

ORDERED, ADJUDGED AND DECLARED that all No-Fault lawsuits, arbitrations, awards, judgments, and claims filed by ARS MEDICAL EQUIPMENT CORP., NYC

SOUTHERN BLVD MEDICAL, P.C., CMA PSYCHOLOGY, P.C., NEW YORK RECOVERY PT, P.C., LIGHT TOUCH CHIROPRACTIC, P.C., IRONBOUND MRI, L.L.C., PK MODERN ACUPUNCTURE, P.C., RO MEDICAL CARE, P.C., SUNNYSIDE CHEMISTS, INC., I AM SUPPLIES, INC., METRO PAIN SPECIALISTS, P.C., ADVANCED COMPREHENSIVE LABORATORY, L.L.C. d/b/a TOPLAB, TOPLAB, RAF SPORTS CHIROPRACTIC, P.C., COMPLETE EXPRESS MEDICAL, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK, P.L.L.C., REFUAH DIAGNOSTICS, L.L.C., HEALTHY BIG APPLE CHIROPRACTIC, P.C., ACCESS CARE PT, P.C., WELLNESS MEDICAL OF CORONA, P.C., IGOR MAYZENBERG, L.AC., STAY WELL CHIROPRACTIC, P.C., APEX MEDICAL, P.C., FULL PSYCHOLOGY, P.C., WILSHIRE CHIROPRACTIC, P.C., JAN SCHREUDER, M.D., P.C., SIMPLY DME, L.L.C., BISOMA PHARMACY, INC., ASG RX CORP., DANIEL DRAPACZ DPM, P.C., BV PHYSICAL THERAPY, P.C., RX MASTERS, INC., METROPOLITAN MEDICAL & SURGICAL, P.C., QUALITY ORTHOPEDIC AND COMPLETE JOINT CARE, P.C., VW SURG SUPPLY, INC., FLUSHING MEDICAL SUPPLY, INC., AMIT KHANEJA NEUROLOGY PRACTICE, P.L.L.C., MYEHM RX, INC., SOUTH SHORE CHIROPRACTIC, P.C., BETTER HEALTH CHIROPRACTIC, P.C. a/k/a BHC CHIROPRACTIC, AVK RX, INC., WILLIAM COOPER, D.C., BRIARWOOD RX, INC., MILLENNIUM PHARMACY, INC., COMPLETE NEUROPSYCHOLOGY, P.C., ALL HEALTH DME, INC., NJS PHYSICAL MEDICINE AND REHABILITATION, P.C., NYU FACULTY GROUP PRACTICE, AMA SUPPLY, INC., EMMONS AVENUE MEDICAL OFFICE, P.C., PROCARE MEDICAL EQUIPMENT, L.L.C., AMSTERDAM 2020 PHARMACY RX, INC., NEXRAY MEDICAL IMAGING, P.C., TOP CHOICE PHARMACY CORP., MILLENNIUM AMBULATORY SURGERY CENTER, L.L.C., DR. OFFENBACHER

MEDICAL IMAGING, P.L.L.C., THIRSTTON GEORGE, and JUNIOR JEAN-GILES, arising from the July 3, 2020, loss referenced in the complaint, and referenced by claim number 52-08R1-49Q, are hereby stayed. This stay shall not be a bar against dismissing any such related actions based on theories of res judicata or collateral estoppel where applicable, and it is further,

ORDERED that this action is severed and shall proceed against the remaining defendants CHAND MEDICAL, P.C., IDEAL CARE PHARMACY, INC., and JUBAR JONES.

This constitutes the decision and order of the Court.

<u>9/27/2022</u> DATE					<u>Mary V Rosado</u> HON. MARY V. ROSADO, 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"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE