

Hereford Ins. Co. v Stand-Up MRI of the Bronx, P.C.
2022 NY Slip Op 33560(U)
October 18, 2022
Supreme Court, New York County
Docket Number: Index No. 151824/2021
Judge: Mary V. Rosado
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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. 151824/2021

HEREFORD INSURANCE COMPANY,

MOTION DATE 04/12/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

STAND-UP MRI OF THE BRONX, P.C., PRO FORM
PHYSICAL THERAPY P.C., EVAN G PASQUA, JOHN A.
MITAMURA, M.D., BEACON HILL ORTHOPEDICS
PLLC, ROCKLAND AND BERGEN SURGERY CENTER,
ROBERT A. MARINI, M.D., MDS MEDICAL DEVICE
SPECIALTY, INC., NYC HEALTH & HOSPITALS, YOLANDA
JEFFERSON

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 25, 26, 27, 29

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, and there being no opposition, Plaintiff Hereford Insurance
Company's ("Plaintiff") motion for default judgment is granted.

This action arises out of an alleged motor-vehicle collision in the Bronx which took place
on August 27, 2018 (NYSCEF Doc. 1 at ¶ 12). Defendant Yolanda Jefferson ("Jefferson") was a
passenger in a taxi being driven by Thomas Ampofo ("Ampofo") which was insured by Plaintiff
(id.). There was no police report authored regarding the accident, but Jefferson claims the insured
vehicle hit a motorcycle and crashed out of control (id. at ¶ 13). When the Plaintiff contacted
Ampofo, he denied being involved in an accident on that day (id.).

According to a sworn statement from Ampofo, he was driving Jefferson when he saw a
crowd of people surrounding a pedestrian who was hit by an MTA bus (id. at ¶ 14). This caused
Ampofo to pull to the side of the road and call 911 (id.). When Ampofo got back in the car, he

claims Jefferson was on the phone complaining about being injured in an auto collision (*id.*). Jefferson submitted a claim to Plaintiff stating she sustained extensive bodily injuries as a result of the alleged collision (*id.* at ¶ 15).

Jefferson appeared for an examination under oath (“EUO”) where Plaintiff alleges she contradicted herself multiple times (*id.* at ¶ 33). Specifically, (1) Jefferson said she believed the car collided with a large pothole or someone on a bicycle, but later admitted she did not see a pothole or a bicycle when she exited the vehicle after the collision; (2) Jefferson said she saw a person laying on the ground and assumed the person was hit by the insured vehicle, but when confronted with the fact that an MTA bus hit a pedestrian in that area, she could not explain why she assumed her vehicle had hit a person; (3) Jefferson claims Ampofo told her he hit a person even though Ampofo’s sworn statement denied this; (4) Jefferson denied ever saying the collision occurred when the insured vehicle hit a motorcycle even though the claim she submitted alleges her injuries were caused from an accident with a motorcycle, and (5) Jefferson says she was injured when she hit the front-passenger seat even though she was wearing her seatbelt (*id.*).

Plaintiff therefore alleges it has a founded belief that Plaintiff’s injuries did not arise from an insured event or was not causally related to the August 27, 2018 collision and disclaimed coverage on that basis (*id.* at ¶ 34). Plaintiff therefore initiated this action seeking declaratory judgment on February 23, 2021.

Defendants New York City Health and Hospital Corporation S/H/A/ NYC Health & Hospitals A/K/A North Central Bronx Hospital filed an Answer to Plaintiff’s Complaint and settled with Plaintiff (NYSCEF Docs. 12, 28). However, none of the other Defendants have filed an answer or otherwise appeared. Therefore, Plaintiff filed this motion for default judgment on March 18, 2022 against Defendants Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy

P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc. (NYSCEF Doc. 15).

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]). Default judgment is appropriate where, as here, the conditions of CPLR 3215 have been satisfied and an insurer disclaims coverage on a founded belief that alleged injuries did not arise out of a reported accident (*State Farm Mutual Automobile Insurance Company v AK Global Supply Corp.*, 203 AD3d 556 [1st Dept 2022]).

The Court is satisfied that Plaintiff has satisfied the service requirements of CPLR 3215 (NYSCEF Docs. 15, 22, and 24). Further, Plaintiff has shown proof of the facts constituting its claim in compliance with CPLR 3215(f) since Plaintiff has provided the affidavit of the adjuster who is handling this claim, an affidavit from Ampofo, Jefferson's application for no-fault benefits, and Jefferson's EUO Transcript (NYSCEF Docs. 17-20). Moreover, Plaintiff has provided a non-military status report for individual defendants Robert Marini, John Mitamura, and Evan Pasqua (NYSCEF Doc. 23). As Plaintiff has complied with the procedural requirements of CPLR 3215,

and defaulters are deemed to have admitted all the factual allegations in the Complaint, default judgment is appropriate here.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for default judgment against Defendants Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc. is granted; and it is further

ORDERED, ADJUGDED, AND DECLARED that Yolanda Jefferson's alleged injuries and any subsequent no-fault treatment submitted by Defendants Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc. were not causally related to the alleged incident of August 27, 2018 referenced in the Complaint (Hereford claim number 77957) and did not arise from an insured event; and it is further,

ORDERED, ADJUGDED, AND DECLARED that Plaintiff owes no duty to provide no-fault reimbursements to Defendants Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc. for any treatment allegedly rendered to Jefferson in connection with the alleged incident of August 27, 2018 referenced in the Complaint (Hereford claim number 77957); and it is further,

ORDERED, ADJUGDED, AND DECLARED that by reason of no coverage, Plaintiff is not required to pay any sums, monies, damages, awards and/or benefits to Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon

Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc, including but not limited to Mandatory Personal Injury Protection No-Fault, Additional Personal Injury Protection, Bodily Injury and Property Damage Liability, and Supplemental Uninsured/Underinsured Motorist Coverage, for any treatment allegedly rendered to Yolanda Jefferson, in connection with the alleged incident of August 27, 2018, (Hereford claim number 77957), and it is further;

ORDERED that the Clerk of the Court is directed to enter judgment as against Stand-Up MRI of the Bronx, P.C., Pro Form Physical Therapy P.C., Evan G. Pasqua, John A. Mitamura, M.D., Beacon Hill Orthopedics PLLC, Rockland and Bergen Surgery Center, Robert A. Marini, M.D., and MDS Medical Device Specialty Inc, including but not limited to Mandatory Personal Injury Protection No-Fault, Additional Personal Injury Protection, Bodily Injury and Property Damage Liability, and Supplemental Uninsured/Underinsured Motorist Coverage; and it is further

ORDERED that this action is severed and continues against the remaining Defendant Yolanda Jefferson; and it is further,

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Order upon defendant, with notice of entry.

10/18/2022
DATE

Mary V Rosado
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"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE