

**State Farm Mut. Auto. Ins. Co. v Go Flex Rehab
Physical Therapy, P.C.**

2022 NY Slip Op 33565(U)

October 18, 2022

Supreme Court, New York County

Docket Number: Index No. 154166/2021

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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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 154166/2021

MOTION DATE 06/16/2022

MOTION SEQ. NO. 001

- v -

GO FLEX REHAB PHYSICAL THERAPY, P.C., BIG APPLE MEDICAL GROUP CORP., AKE SERVICES, INC., SCOB, LLC, GC PHYSICAL THERAPY, P.C., Lenco DIAGNOSTIC LABORATORIES, INC., PREMIER ANESTHESIA ASSOCIATES, PA, METROPOLITAN MEDICAL & SURGICAL P.C., ATLANTIC DIAGNOSTIC, LLC, JEVA PHYSICAL THERAPY, P.C., HEALING SERVICES, INC., MACINTOSH MEDICAL, P.C., NORTH SHORE LIJ MEDICAL, P.C., LIJ MEDICAL CENTER, THOMPSON MEDICAL, P.C., JOSEPH A. RAI, M.D., P.C., STEPHEN A. MATRANGOLO, D.C., P.C., BETTER HANDS PHYSICAL THERAPY, P.C., NEXRAY MEDICAL IMAGING, P.C., TRISTATE PSYCHOLOGICAL SERVICES, P.C., ADVANCED COMPREHENSIVE LABORATORY, LLC D/B/A TOBLAB, INC., ADVANCED SPINE SURGERY CENTER, INTEGRATED CHIROPRACTIC, P.C., FRESH POND MEDICAL SUPPLY, INC., COMMUNITY PHYSICAL THERAPY REHAB PT, P.C., NEW SENSE ACUPUNCTURE, P.C., CUREMED RX, INC., PHOENIX MEDICAL SERVICES, P.C., NEW YORK INJURY CHIROPRACTIC REHAB, P.C., FOUNTAIN CHIROPRACTIC, P.C., WILLY COMPERE, JONATHAN EDOUARD, URIEL WATT, PHOEBEE CELESTIN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, Plaintiff State Farm Mutual Automobile Insurance Company's ("Plaintiff") motion for default judgment is granted in part and Defendants Scob, LLC, Premier Anesthesia Associates, P.A., and Community Physical Therapy Rehab, P.T., P.C. cross-motion seeking an extension of time to appear is granted.

Plaintiff moves for default judgment against Go Flex Rehab Physical Therapy, P.C., Ake Services, Inc., Scob, LLC, Lenco Diagnostic Laboratories, Inc., Premier Anesthesia Associates, PA, Metropolitan Medical & Surgical P.C., Atlantic Diagnostic, LLC, Jeva Physical Therapy, P.C., Healing Services, Inc., Macintosh Medical, P.C., North Shore LIJ Medical, P.C., LIJ Medical Center, Thompson Medical, P.C., Joseph A. Raia, M.D., P.C., Stephen A. Matrangelo, D.C., PP.C., Better Hands Physical Therapy, P.C., Nexray Medical Imaging, P.C., Advanced Comprehensive Laboratory, LLC d/b/a Toplab, Inc., Advanced Spine Surgery Center, Integrated Chiropractic, P.C., Fresh Pond Medical Supply, Inc., Community Physical Therapy Rehab PT, P.C., New Sense Acupuncture, P.C., Curedmed RX, Inc., Phoenix Medical Services, P.C., New York Injury Chiropractic Rehab, P.C., Fountain Chiropractic, P.C., Willy Compere (“Compere”, Jonathan Edouard (“Edouard”), Uriel Watt (“Watt”), and Phoebee Celestin (“Celestin”), (collectively “Defaulting Defendants”). Defendants Big Apple Medical Group Corp. and Tristate Psychological Services, P.C. have answered and are not in default (NYSCEF Doc. 29).

Plaintiff seeks default judgment declaring that it is not entitled to pay any of defaulting defendants based on no-fault coverage issued under Watt’s automobile insurance policy (NYSCEF Doc. 40). This action arises out of a purported car accident. Compere and Edouard were passengers in a vehicle driven by Watt. (NYSCEF Doc. 1 at ¶ 36). Compere, Edouard, and Watt each alleged that on February 12, 2020, a vehicle ran a stop sign and struck Watt’s vehicle at the intersection of 215th Street and Jamaica Avenue in Queens, New York (*id.*). The collision was reported to plaintiff on March 2, 2020 by a medical provider (*id.* at ¶ 37).

Plaintiff alleges that the claim is fraudulent based on various pieces of evidence, including (1) the policy address is in Mount Vernon, New York, but the loss and all treatment received was in Flushing, New York; (2) Watt had a prior loss with Geico at the Hollis Address; (3) Watt was

involved in another accident the day after the accident giving rise to this lawsuit; (4) the insured vehicle was registered in Hollis New York two days prior to the loss; (5) the accident occurred four days after the policy was procured; (6) Watt's medical bills list an address in Hollis, New York; (7) Compere has been in three other car accidents in the last six years, and (8) the police report did not note any injuries even though Watt, Edouard and Compere all received extensive medical treatment.

Watt failed to appear for an examination under oath ("EUO") as required by his policy (*id.* at ¶ 50). While Edouard and Compere appeared, Plaintiff alleges there were multiple inconsistencies between their EUOs, including Edouard denying having any criminal history despite having four criminal offenses in North Carolina, contradicting each other as to whether an ambulance arrived on the scene, and contradicting each other as to the time the accident occurred (*id.* at ¶ 51). Moreover, the other driver in the accident alleged that he was fully stopped at a stop sign when the insured vehicle swerved into the front of his vehicle leading to an extremely minor collision, and that Watt called the police to report the collision only after the other driver had left the scene (*id.*). Edouard and Compere failed to return subscribed copies of their EUO transcripts (*id.* at ¶ 52).

Based on these allegations, Plaintiff seeks to disclaim no-fault coverage because (1) the loss was intentionally caused; (2) Watt's failure to appear for an EUO on two occasions breached a condition precedent to coverage, and as a result of that breach, Plaintiff is relieved of its obligation to pay any no-fault claims assigned by Watt; and (3) Compere and Edouard breached a condition precedent to coverage under the no-fault regulations by failing to return subscribed copies of their EUO transcripts and, as a result of said breaches, Plaintiff is relieved of any obligation to pay no-fault claims assigned by Compere and Edouard.

None of the Defaulting Defendants have appeared other than Defendants Scob, LLC, Premier Anesthesia Associates, P.A., and Community Physical Therapy Rehab, P.T., P.C. who have cross-moved seeking an extension of time to answer.

A. Default Judgment

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]).

The Court is satisfied that Plaintiff has satisfied the service requirements of CPLR 3215(g) (NYSCEF Docs. 2-27; 39, 56, 57). Plaintiff has satisfied CPLR 3215 (f)'s requirement of showing proof of the facts constituting the claim through numerous affidavits and affirmations of individuals with firsthand knowledge, as well as multiple documents substantiating the allegations in Plaintiff's Complaint (NYSCEF Docs. 41, 44-54). 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. Further, failure to subscribe examination under oath testimony in accordance with 11 N.Y.C.R.R. 65-1.1 which is a condition precedent to obtain coverage can result in loss of coverage (*Kemper Independent Ins. Co. v*

Cornerstone Chiropractic, P.C., 185 AD3d 468, 468-469 [1st Dept 2020]). As Plaintiff has alleged material misrepresentations, obstruction to its claims investigation, and violations of 11 N.Y.C.R.R. 65-1.1, and provided proof substantiating these allegations, the Court finds that Plaintiff has satisfied CPLR 3215 (f). Plaintiff has also provided in support of its application non-military status reports for each of the individual defendants (NYSCEF Doc. 55).

As defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them, and Plaintiff has complied with the requirements of CPLR 3215, Plaintiff's application for default judgment is granted against all Defaulting Defendants except for Defendants Scob, LLC, Premier Anesthesia Associates, P.A., and Community Physical Therapy Rehab, P.T., P.C. (the "Opposing Defendants") who have cross-moved seeking an extension of time to answer.

B. Extension of Time to Answer

In New York, public policy favors resolving cases on their merits (*Yea Soon Chung v Mid Queens LP*, 139 AD3d 490 [1st Dept 2016]). Moreover, CPLR 3012(d) provides that "upon the application of a party, the Court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default." Granting an extension of time to answer is within the discretion of the Court (*Guzetti v City of New York*, 32 AD3d 234 [1st Dept 2006]).

The Opposing Defendants claim they have a reasonable excuse for their default as service of the Summons and Complaint was made upon the Secretary of State and, as such, they did not have notice of this action until served with a notice of default judgment (NYSCEF Doc. 61). After receiving notice, they hastily retained counsel and opposed the motion for default judgment (*id.*). The facts of this case are similar to *Barazani v New Line Cinema Corp.*, 52 AD2d 543 (1st Dept.

1976) where the First Department held that where default occurs after service is only made upon the Secretary of State, and upon service of default judgment papers a Defendant hastily appears, the delay in filing an Answer will be deemed excusable. Therefore, the Opposing Defendants have a reasonable excuse for their default. Where, as here, there has been no order granting Plaintiff default judgment, a defendant need not show a meritorious defense to be granted an extension of time to answer (*Jones v 414 Equities LLC*, 57 AD3d 65, 81 [1st Dept 2008]). Given the very brief delay, the lack of any prejudice to Plaintiff in allowing Opposing Defendants to serve a late Answer, and New York's public policy in favor of resolving cases on the merits, the Opposing Defendants' cross-motion (which is unopposed) is granted.

Accordingly, it is hereby

ORDERED, ADJUDGED AND DECLARED that Plaintiff's motion for default judgment is granted and Plaintiff has not duty to pay any No-Fault benefits in the form of sums, monies, damages, awards, judgments, or benefits to Go Flex Rehab Physical Therapy, P.C., Ake Services, Inc., Lenco Diagnostic Laboratories, Inc., Metropolitan Medical & Surgical P.C., Atlantic Diagnostic, LLC, Jeva Physical Therapy, P.C., Healing Services, Inc., Macintosh Medical, P.C., North Shore LIJ Medical, P.C., LIJ Medical Center, Thompson Medical, P.C., Joseph A. Raia, M.D., P.C., Stephen A. Matrangolo, D.C., PP.C., Better Hands Physical Therapy, P.C., Nexray Medical Imaging, P.C., Advanced Comprehensive Laboratory, LLC d/b/a Toplab, Inc., Advanced Spine Surgery Center, Integrated Chiropractic, P.C., Fresh Pond Medical Supply, Inc., New Sense Acupuncture, P.C., Curemed RX, Inc., Phoenix Medical Services, P.C., New York Injury Chiropractic Rehab, P.C., Fountain Chiropractic, P.C., Willy Compere, Jonathan Edouard, Uriel Watt, and Phoebee Celestin, their agents, employees, assignees or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover

benefits with respect to the collision that occurred on February 12, 2020, referenced in the Complaint, and referenced by claim number 52-04Z4-92X; and it is further,

ORDERED, ADJUDGED AND DECLARED that all No-Fault lawsuits, arbitrations, awards, judgments, and claims filed by Go Flex Rehab Physical Therapy, P.C., Ake Services, Inc., Lenco Diagnostic Laboratories, Inc., Metropolitan Medical & Surgical P.C., Atlantic Diagnostic, LLC, Jeva Physical Therapy, P.C., Healing Services, Inc., Macintosh Medical, P.C., North Shore LIJ Medical, P.C., LIJ Medical Center, Thompson Medical, P.C., Joseph A. Raia, M.D., P.C., Stephen A. Matrangelo, D.C., PP.C., Better Hands Physical Therapy, P.C., Nexray Medical Imaging, P.C., Advanced Comprehensive Laboratory, LLC d/b/a Toplab, Inc., Advanced Spine Surgery Center, Integrated Chiropractic, P.C., Fresh Pond Medical Supply, Inc., New Sense Acupuncture, P.C., Curedmed RX, Inc., Phoenix Medical Services, P.C., New York Injury Chiropractic Rehab, P.C., Fountain Chiropractic, P.C., Willy Compere, Jonathan Edouard, Uriel Watt, and Phoebee Celestin arising from the February 12, 2020 collision referenced in the Complaint, and referenced by claim number 52-04Z4-92X, 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, ADJUDGED, AND DECLARED that Plaintiff owes no duty to defend or indemnify Uriel Watt, or pay any potential liability claims filed by Jonathan Edouard, Willy Compere, and Phoebee Celestin, or any other third parties involved in the February 12, 2020, collision referenced in the Complaint, and referenced by claim number 52-04Z4-92X; and it is further,

ORDERED that this action is severed and shall proceed against the remaining Defendants Scob, LLC, Premier Anesthesia Associates, P.A., Community Physical Therapy Rehab, P.T., P.C., Big Apple Medical Group Corp. and Tristate Psychological Services, P.C.; and it is further,

ORDERED that Defendants Scob, LLC, Premier Anesthesia Associates, P.A., Community Physical Therapy Rehab, P.T., P.C., Answer annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof.

This constitutes the decision and order of the Court.

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"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE