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| Kemper Independence Ins. Co. v Rothpearl |
| 2022 NY Slip Op 33567(U) |
| October 18, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 154799/2021 |
| Judge: Mary V. Rosado |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO
Justice

PART 33

KEMPER INDEPENDENCE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 154799/2021
MOTION DATE 06/10/2022
MOTION SEQ. NO. 001

- v -

ALLEN ROTHPEARL, MD, PC/JERICO SPECIALTY
IMAGING, COHEN & KRAMER, MD, PC, EMPIRE STATE
AMBULATORY SURGERY CENTER, EXPRESS SUPPLY &
SERVICES, INC., LIBERTY REGIONAL CHIROPRACTIC,
PC, LIMA SUPPLY, INC., ORTHOMOTION REHAB DME,
INC., PONCE ACUPUNCTURE, PC, RICHARD C.
KOFFLER, SEDATION VACATION PERIOPERATIVE
MEDICINE PLLC, TITAN PHARMACY LEVRON
INC., YELLOWSTONE MEDICAL REHAB, PC, TELMA C.
REYES

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23,
24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for

JUDGMENT - DEFAULT

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

This action arises out of an automobile accident on April 30, 2020 caused by an alleged
side swipe (NYSCEF Doc. 1 at ¶ 15). Plaintiff insured a vehicle driven by Defendant Telma C.
Reyes ("Reyes") (id.). After investigation into the incident, Plaintiff maintained a founded belief
that the alleged injuries were not causally related to the April 30, 2020 accident (id. at ¶ 25).

In particular, Plaintiff asserts that Reyes has submitted over \$50,000 worth of medical
claims. She testified under oath that: she was wearing her seatbelt when the collision occurred; she
was travelling about 20 miles per hour at the time of the collision; the airbags did not deploy; she
declined medical attention; and the vehicle did not need to be towed from the scene. She waited 6

weeks to begin medical treatment, she does not explain why she did not consult her primary care physician after the accident, and she could not remember the treatment she received, the names of her physicians, or why she needed surgery (*id.*). Plaintiff also requested examinations under oath (“EUOs”) of certain medical provider defendants, but those defendants failed to appear for their EUOs on two separate occasions which breached a condition precedent to coverage (*id.* at ¶ 27). As such, Plaintiff initiated this action on May 17, 2021, seeking declaratory judgment that it is under no obligation to provide no-fault benefits to Reyes or any of her assignees for purported injuries arising out of the April 30, 2020 accident.

Defendants Orthomotion Rehab DME, Inc. and Cohen & Kramer, M.D., P.C. both filed Answers; however, to date, no other party has appeared. As such, Plaintiff moved for default judgment on May 27, 2022 against Defendants Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC, and Telma C. Reyes (collectively “Defaulting Defendants”) (NYSCEF Doc. 19). None of the Defaulting Defendants have opposed the motion or otherwise appeared.

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 met the service requirements of CPLR 3215 (NYSCEF Docs. 27, 29). Moreover, Plaintiff has provided a current non-military status affidavit for Defendant Reyes (NYSCEF Doc. 28). Finally, Plaintiff has shown sufficient proof of the facts of its claim through the adjuster affidavit, police report, EUO transcript, and correspondences requesting EUOs from the medical provider defendants (NYSCEF Docs. 21-25). Therefore, as defaulting parties are deemed to have admitted all factual allegations and all reasonable inferences that flow from them, and Plaintiff has complied with CPLR 3215, default judgment is appropriate.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for default judgment against Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC, and Telma C. Reyes is granted; and it is further

ORDERED, ADJUDGED, AND DECLARED that Telma C. Reyes's alleged injuries and any subsequent no-fault treatment submitted by Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty

Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC, were not causally related to the April 30, 2020 collision referenced in the Complaint (claim number C016952NY20) and/or did not arise from an insured event; and it is further,

ORDERED, ADJUDGED, AND DECLARED that Plaintiff, by reason of no coverage, since Telma C. Reyes's alleged injuries and any subsequent no-fault treatment submitted by Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC, were not causally related to the April 30, 2020 collision referenced in the Complaint (claim number C016952NY20) and/or did not arise from an insured event, is not required to pay any sums, monies, damages, awards and/or benefits to Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC and Telma C. Reyes, 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, in connection with the alleged incident of April 30, 2020 collision referenced in the Complaint (claim number C016952NY20); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment as against Allen Rothpearl, MD, PC/Jericho Specialty Imaging, Empire State, Ambulatory Surgery Center, Express Supply & Services, Inc., Liberty Regional Chiropractic, PC, Lima Supply, Inc., Ponce Acupuncture, PC, Richard C. Koffler d/b/a Motion Medical Diagnostics, PC, Sedation Vacation Perioperative Medicine PLLC, Titan Pharmacy Levron Inc., Yellowstone Medical Rehab, PC and Telma C. Reyes; and it is further

ORDERED that this action is severed and will continue against Defendants Orthomotion Rehab DME, Inc. and Cohen & Kramer, M.D., P.C.; and it is further,

ORDERED that Plaintiff shall serve a copy of this decision and order on all parties within seven (7) days of entry.

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:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE