

**State Farm Mut. Auto. Ins. Co. v All City Family  
Healthcare Ctr., Inc.**

2022 NY Slip Op 33618(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 157339/2021

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. MARY V. ROSADO**

**PART**

**33M**

*Justice*

-----X

**INDEX NO. 157339/2021**

STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY,

**MOTION DATE 03/29/2022**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

ALL CITY FAMILY HEALTHCARE CENTER, INC., AVK RX, INC., BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C., BNT-AMS CORP., CAVALLARO MEDICAL SUPPLY, INC. A/K/A CALLAVARO MEDICAL SUPPLY, INC., COME CHIROPRACTIC, P.C., CVAP MEDICAL, P.C., EAST COAST MED GROUP, INC., EMMONS AVENUE MEDICAL OFFICE, P.C., GOOD MEDICA, INC., GOTHAM MEDICINE, P.C., HILLSIDE PRIMARY MEDICAL CARE, P.C., IDEAL CARE PHARMACY, INC., INTEGRATIVE FAMILY HEALTH NP, P.L.L.C., ISLAND AMBULATORY SURGERY CENTER, L.L.C., KALFAYAN MEDICAL CARE, P.L.L.C., LENCO DIAGNOSTIC LABORATORIES, INC., LONGEVITY MEDICAL SUPPLY, INC., LR MEDICAL, P.L.L.C., LZ GROUP MEDICAL SERVICES, P.C., MDCA PSYCHOLOGY CARE, P.C., METROPOLITAN MEDICAL & SURGICAL P.C. A/K/A METRO MEDICAL & SURGICAL, P.C., NEXRAY MEDICAL IMAGING, P.C., NYC FAMILY HEALTH NP, P.C., OLD STAR, INC., PRECISE MEDICAL SOLUTIONS, L.L.C., PSG PSYCHOLOGY, P.L.L.C., PULMONARY AND SLEEP MEDICAL, P.C., QUALITY CARE RX, INC., REHAB TIME PT, P.C., RIBEIRO PAIN MANAGEMENT, P.L.L.C., RIGHT CHOICE SUPPLY, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, P.L.L.C., NEXRAY MEDICAL IMAGING, P.C. A/K/A SOUL RADIOLOGY, STAND-UP MRI OF BENSONHURST, P.C., THERALOGICS, INC., SIMEON ISSACS, M.D., MARK RITCH, D.O., P.A., MICHAEL YURYEV, D.O., BPMC HOSPITAL, BROOKDALE HOSPITAL MEDICAL CENTER, DANIEL ZENO, EVELYNE VICTOR, PETERSON VICTOR, JOSE ORDONEZ, JOSE ORDONEZ AUTO REPAIR AND BODY SHOP CORP

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102

were read on this motion to/for

JUDGMENT - DEFAULT

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

This action arises out of an alleged motor vehicle accident which took place on November 22, 2020 (NYSCEF Doc. 1 at ¶ 48). Defendants Daniel Zeno ("Zeno"), Evelyne Victor ("Evelyne") and Peterson Victor ("Peterson") (collectively "Claimants") were occupants of a vehicle insured by Plaintiff (*id.*). The policy which insured the vehicle was issued to Jose Ordonez and Jose Ordonez Auto Repair and Body Shop Corp. (collectively "Insureds") (*id.*).

A police report was authored shortly after the accident (NYSCEF Doc. 84). The police report indicates that the accident was a sideswipe and that the airbags did not deploy and damage to either vehicle involved in the accident was under \$1,000 (*id.*). The report also states that Zeno did not allege any injuries at the scene (*id.*). Nonetheless, the Claimants have collectively sought hundreds of thousands of dollars in medical treatment related to the accident (NYSCEF Doc. 1 at ¶¶ 59-61).

Plaintiff investigated the claims and found that Zeno has had prior claims that were denied because they were staged losses (*id.* at ¶ 62). Evelyne was also involved in a prior collision on June 27, 2020 which was under investigation for suspicion of staged loss (*id.*). Moreover, the Insureds stated that while they gave Zeno (who is their employee) permission to use the automobile, they were not aware that Zeno was driving passengers in the company automobile. Further, while Claimants partook in an examination under oath ("EUO"), Evelyne and Peterson failed to return a subscribed copy of their EUO transcript in violation of the no-fault regulations (*id.* at ¶ 69).

Plaintiff filed its Complaint on August 5, 2021 seeking declaratory judgment stating that due to a violation of the no-fault regulations and a founded belief that the Claimants injuries did

not arise from an insured incident, Plaintiff is under no obligation to provide any benefits related to the Insureds no-fault policy.

Defendants CVAP Medical, P.C., Emmons Avenue Medical Office, P.C., LZ Group Medical Services, P.C., Pulmonary and Sleep Medical, P.C., Rehab Time PT, P.C., Ribeiro Pain Management, Cavallaro Medical Supply Inc., Longevity Medical Supply Inc., LR Medical, PLLC, PSG Psychology, P.L.L.C., Ideal Care Pharmacy, Inc., All City Family Healthcare Center, Inc., Michael Yuryev D.O., BNT-AMS Corp., East Coast Med Group, Inc., and Integrative Family Health NP, P.L.L.C. (collectively "Answering Defendants") have all Answered Plaintiff's Complaint (NYSCEF Docs. 2, 55, 57, 59, 61, and 78). However, no other defendant has timely answered.

Plaintiff moved for default judgment on March 16, 2022 against the non-answering Defendants (NYSCEF Doc. 80). Plaintiff seeks default judgment against AVK RX, Inc., Bay Ridge Orthopedic Associates, P.C., Come Chiropractic, P.C., Good Medica, Inc., Gotham Medicine, P.C., Hillside Primary Medical Care, P.C., Island Ambulatory Surgery Center, L.L.C., Kalfayan Medical Care, P.L.L.C., Lenco Diagnostic Laboratories, Inc., MDCA Psychology Care, P.C., Metropolitan Medical & Surgical, P.C. a/k/a Metro Medical & Surgical, P.c., Nexray Medical Imaging, P.C., NYC Family Health NP, P.C., Old Star, Inc., Precise Medical Solutions, L.L.C., Quality Care RX, Inc., Right Choice Supply, Inc., Sedation Vacation Perioperative Medicine, P.L.L.C., Nexray Medical Imaging P.C. a/k/a Soul Radiology, Stand-Up MRI of Bensonhurst, P.C., Theralogics, Inc., Simbon Issacs, M.D., BHMC Hospital, Brookdale Hospital Medical Center, Daniel Zeno, Evelyne Victor, Peterson Victor, and Jose Ordonez Auto Repair and Body Shop Corp. (collectively "Defaulting Defendants") (*id.*). Plaintiff also moves, pursuant to CPLR

3025(b) leave to amend its Complaint to add Jeefrey Metivier as a defendant to the action (*id.*).

Finally, Plaintiff seeks an extension of time to serve the Complaint upon Mark Ritch, D.O., P.A.

### **I. 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]).

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]). 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]).

Plaintiff has satisfied the service requirements of CPLR 3215(g) (*see* NYSCEF Docs. 79, 83, 100). Plaintiff has also satisfied CPLR 3215(f)'s requirement of proof of the facts constituting Plaintiff's claims. Specifically, Plaintiff has provided an affidavit from Richa Sinha, a claims specialist employed by Plaintiff who handled the claim giving rise to this lawsuit (NYSCEF Doc. 81). Further, the police report, EUO transcripts, policy conditions, EUO letters, and disclaimer

letters submitted in support of Plaintiff's motion provide further proof of the facts constituting Plaintiff's claims (NYSCEF Docs. 84-94). Finally, Plaintiff has provided affidavits containing non-military status reports as to individual Defendants Simeon Issacs, Daniel Zeno, Peterson Victor, and Evelyne Victor in compliance with 50 App USC § 521 (NYSCEF Doc. 95). As Plaintiff has complied with the requirements of CPLR 3215, and the defaulting Defendants have not filed timely answers or otherwise appeared, Plaintiff's motion for default judgment is granted.

## **II. Leave to Amend**

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical Center*, 203 AD3d 462 [1st Dept 2022]). As there is no opposition, and leave to amend the pleadings is freely granted, this branch of Plaintiff's motion is granted.

## **III. Extension of Time to Serve Mark Ritch, D.O., P.A.**

Pursuant to CPLR 306-b, a court may extend the 120-day time limit to serve a defendant upon good cause shown or in the interest of justice. Here, Plaintiff's process server, despite diligent efforts, was unable to effect personal service upon Defendant Mark Ritch, D.O., P.A. (NYSCEF Doc. 99). As Plaintiff has demonstrated that it and its agents have made diligent efforts to serve Defendant Mark Ritch, D.O., P.A., but have been unable to do so in the 120-day time limit, the Court will grant Plaintiff another 120 days to serve Defendant Mark Ritch, D.O., P.A.

Accordingly, it is hereby,

ORDERED that Plaintiff State Farm Mutual Automobile Insurance Company's motion for default judgment against AVK RX, Inc., Bay Ridge Orthopedic Associates, P.C., Come Chiropractic, P.C., Good Medica, Inc., Gotham Medicine, P.C., Hillside Primary Medical Care, P.C., Island Ambulatory Surgery Center, L.L.C., Kalfayan Medical Care, P.L.L.C., Lenco Diagnostic Laboratories, Inc., MDCA Psychology Care, P.C., Metropolitan Medical & Surgical, P.C. a/k/a Metro Medical & Surgical, P.c., Nexray Medical Imaging, P.C., NYC Family Health NP, P.C., Old Star, Inc., Precise Medical Solutions, L.L.C., Quality Care RX, Inc., Right Choice Supply, Inc., Sedation Vacation Perioperative Medicine, P.L.L.C., Nexray Medical Imaging P.C. a/k/a Soul Radiology, Stand-Up MRI of Bensonhurst, P.C., Theralogics, Inc., Simbon Issacs, M.D., BHMC Hospital, Brookdale Hospital Medical Center, Daniel Zeno, Evelyne Victor, Peterson Victor, and Jose Ordonez Auto Repair and Body Shop Corp. is granted and the Clerk of the Court is directed to enter judgment accordingly as set forth below; and it is further

ORDERED, ADJUDGED AND DECLARED that Plaintiff State Farm Mutual Automobile Insurance Company has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards, judgments, or benefits to AVK RX, Inc., Bay Ridge Orthopedic Associates, P.C., Come Chiropractic, P.C., Good Medica, Inc., Gotham Medicine, P.C., Hillside Primary Medical Care, P.C., Island Ambulatory Surgery Center, L.L.C., Kalfayan Medical Care, P.L.L.C., Lenco Diagnostic Laboratories, Inc., MDCA Psychology Care, P.C., Metropolitan Medical & Surgical, P.C. a/k/a Metro Medical & Surgical, P.c., Nexray Medical Imaging, P.C., NYC Family Health NP, P.C., Old Star, Inc., Precise Medical Solutions, L.L.C., Quality Care RX, Inc., Right Choice Supply, Inc., Sedation Vacation Perioperative Medicine, P.L.L.C., Nexray Medical Imaging P.C. a/k/a Soul Radiology, Stand-Up MRI of Bensonhurst, P.C., Theralogics,

Inc., Simbon Issacs, M.D., BHMC Hospital, Brookdale Hospital Medical Center, Daniel Zeno, Evelyne Victor, Peterson Victor, and Jose Ordonez Auto Repair and Body Shop Corp. 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 alleged collision that occurred on November 22, 2020, referenced in the complaint, and referenced by claim number 32-12Z8-62W; and it is further,

ORDERED, ADJUDGED AND DECLARED that all No-Fault lawsuits, arbitrations, awards, judgments, and claims filed by AVK RX, Inc., Bay Ridge Orthopedic Associates, P.C., Come Chiropractic, P.C., Good Medica, Inc., Gotham Medicine, P.C., Hillside Primary Medical Care, P.C., Island Ambulatory Surgery Center, L.L.C., Kalfayan Medical Care, P.L.L.C., Lenco Diagnostic Laboratories, Inc., MDCA Psychology Care, P.C., Metropolitan Medical & Surgical, P.C. a/k/a Metro Medical & Surgical, P.c., Nexray Medical Imaging, P.C., NYC Family Health NP, P.C., Old Star, Inc., Precise Medical Solutions, L.L.C., Quality Care RX, Inc., Right Choice Supply, Inc., Sedation Vacation Perioperative Medicine, P.L.L.C., Nexray Medical Imaging P.C. a/k/a Soul Radiology, Stand-Up MRI of Bensonhurst, P.C., Theralogics, Inc., Simbon Issacs, M.D., BHMC Hospital, Brookdale Hospital Medical Center, Daniel Zeno, Evelyne Victor, Peterson Victor, and Jose Ordonez Auto Repair and Body Shop Corp. 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 alleged collision that occurred on November 22, 2020, referenced in the complaint, and referenced by claim number 32-12Z8-62W 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 CVAP Medical, P.C., Emmons Avenue Medical Office, P.C., LZ Group Medical Services, P.C., Pulmonary and Sleep Medical, P.C., Rehab Time PT, P.C., Ribeiro Pain Management, Cavallaro Medical Supply Inc., Longevity Medical Supply Inc., LR Medical, PLLC, PSG Psychology, P.L.L.C., Ideal Care Pharmacy, Inc., All City Family Healthcare Center, Inc., Michael Yuryev D.O., BNT-AMS Corp., East Coast Med Group, Inc., and Integrative Family Health NP, P.L.L.C., and it is further,

ORDERED that Plaintiff State Farm Mutual Automobile Insurance Company's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that pursuant to CPLR 306-b, Plaintiff State Farm Mutual Automobile Insurance Company is granted a 120-day extension to serve Defendant Mark Ritch, D.O., P.A; and it is further

ORDERED that within thirty (30) days of entry, Plaintiff State Farm Mutual Automobile Insurance Company shall serve a copy of this decision and order, with notice of entry, upon all parties to this action, and it is further,

This constitutes the decision and order of the Court.

<u>10/21/2022</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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE