

State Farm Mut. Auto. Ins. Co. v Bay Med., P.C.

2022 NY Slip Op 33727(U)

October 25, 2022

Supreme Court, New York County

Docket Number: Index No. 150893/2022

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 33M

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 150893/2022

MOTION DATE 09/07/2022

MOTION SEQ. NO. 001

- v -

BAY MEDICAL, P.C., CITIMED COMPLETE MEDICAL CARE, P.C., IDEAL CARE PHARMACY, INC., LIFE CHIROPRACTIC, P.C., LR MEDICAL, PLLC, SOORAJ POONAWALA, D.O., SP NURSE PRACTITIONER IN ADULT HEALTH, P.C., WORLD BEST MEDICAL SUPPLY, INC., HEADLAM MEDICAL PROFESSIONAL CORPORATION, CHANEL GONZALEZ

Defendant.

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DECISION + ORDER ON MOTION

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, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

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 against Bay Medical, P.C., Citimed Complete Medical Care, P.C., Ideal Care Pharmacy, Inc., LR Medical, PLLC, Sooraj Poonawala, D.O., SP Nurse Practioner in Adult Health, P.C., World Best Medical Supply, Inc., Headlam Medical Professional Corporation and Chanel Gonzalez (collectively "Defaulting Defendants") is granted in part and Defendant Ideal Care Pharmacy, Inc.'s ("Ideal Care") cross-motion seeking denial of Plaintiff's motion for default judgment against it and compelling Plaintiff to accept Ideal Care's Answer is granted.

Plaintiff filed its Complaint on January 28, 2022 (NYSCEF Doc. 1). In its Complaint, Plaintiff alleges that on May 14, 2021, Chanel Gonzalez (Gonzalez) was driving a 2009 Honda Accord, which was insured by Plaintiff in a policy issued to Gonzalez (id. at ¶ 12). On that date,

Gonzalez was allegedly involved in a car accident (*id.*). The police report generated at the accident scene contained conflicting accounts of how the accident occurred (*id.*). Gonzalez alleges that the adverse driver involved in the accident had tried to cut her off which caused her to hit the back corner of the adverse driver's vehicle, while the adverse driver reported that he was in the middle lane when Gonzalez attempted to merge into that lane and crashed into his vehicle (*id.*). The police report also stated that no vehicle needed to be towed from the scene, and none of the individuals involved reported any injuries (*id.*). However, after the accident, Gonzalez submitted a claim to Plaintiff alleging she suffered serious bodily injuries as a result of the May 14, 2021 collision (*id.* at ¶ 13). Allegedly, tens of thousands of dollars in bills for medical treatment have been submitted to Plaintiff (*id.* at ¶ 20).

Gonzalez attended an examination under oath ("EUO") as part of its claim investigation process (*id.* at ¶ 22). During the EUO, Plaintiff found out that although the policy was issued to cover Gonzalez's automobile which was said to be principally garaged in North Carolina, Gonzalez was actually keeping the insured automobile in Brooklyn, New York which constituted a material misrepresentation in obtaining an automobile insurance policy. Moreover, it is alleged that Gonzalez failed to return a subscribed copy of her EUO testimony in violation of the no-fault regulations (*id.* at ¶ 24). Therefore, based on violations of the no-fault regulations, and the specious claims, Plaintiff seeks declaratory judgment stating that it is under no obligation to provide any no-fault benefits to any of the named defendants for medical treatment provided to Gonzalez related to the May 14, 2021.

On May 16, 2022, Defendant Ideal Care attempted to interpose its Answer (NYSCEF Doc. 14). On May 18, 2022, Ideal Care's Answer was rejected by Plaintiff (NYSCEF Doc. 16). On June 20, 2022, a stipulation of discontinuance was entered between Plaintiff and Defendant Life

Chiropractic, P.C. As none of the named defendants answered or otherwise appeared, and Plaintiff rejected Ideal Care's Answer, Plaintiff moved for default judgment on August 26, 2022 (NYSCEF Doc. 19). In response, on September 13, 2022 Defendant Ideal Care filed a cross-motion seeking to compel Plaintiff to accept Ideal Care's Answer (NYSCEF Doc. 35).

Ideal Care asserts that its cross-motion should be granted because Ideal Care has a reasonable excuse for its default and a meritorious defense to the action. In particular Ideal Care asserts that the Complaint was served on the Secretary of State pursuant to BCL § 306 on February 17, 2022, but the Secretary of State did not mail the service to Ideal Care until May 3, 2022, well after the time for Ideal Care to answer expired (NYSCEF Doc. 20 at ¶ 9). Moreover, on May 16, 2022, Ideal Care attempted to serve its Answer less than two weeks after receiving service (NYSCEF Doc. 14). Ideal Care also asserts several meritorious defenses (*see generally* NYSCEF Doc. 20).

In New York, public policy favors resolving cases on their merits (*Yea Soon Chung v Mid Queens LP*, 139 AD3d 490 [1st Dept 2016]). To successfully oppose a motion for default judgment, a Defendant must demonstrate both a reasonable excuse for the default and a meritorious defense to Plaintiff's claims (*Genao v Salcedo Maintenance Corp*, 168 AD3d 528. 528-529 [1st Dept 2019]). Whether Defendant demonstrates a reasonable excuse for default and a meritorious defense is within the discretion of the Court (*Oberon Securities v Parmar*, 135 AD3d 446 [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]).

Here, the Court finds there is both a reasonable excuse for delay in answering and a meritorious defense presented. As a preliminary matter, the Court reiterates that public policy favors resolving cases on the merits. 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. Finally, Plaintiff has not filed any opposition in reply to Ideal Care's cross-motion. Therefore, Plaintiff has not shown how it would be prejudiced, or challenged Ideal Care's proffered excuse and potentially meritorious defenses. Therefore, Ideal Care's cross-motion is granted.

However, Plaintiff's motion for default judgment is granted as to the remainder of the defaulting defendants. 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 defaulting defendant's failure to answer or 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]). In undertaking this review, 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]). 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]). It is also well established that a material

misrepresentation made when procuring an insurance policy warrants disclaimer of coverage (*Tower Ins. Co. of New York v Khan*, 93 AD3d 618 [1st Dept 2012]).

Here, the Court finds there has been adequate service on the defaulting defendants (NYSCEF Docs. 19, 23 31, and 32). Therefore, Plaintiff has complied with CPLR 3215(g). Plaintiff has also complied with CPLR 3215(f) by providing the police report, NF-2 forms, the EUO transcript, the affidavit of the underwriter of the policy, EUO letters, and an affidavit of merit from a claims specialist who handled the claim giving rise to this lawsuit (NYSCEF Docs. 21, 24-28). Finally, non-military service affidavits were submitted for individual Defendants Chanel Gonzalez and Sooraj Poonawala (NYSCEF Doc. 30). Thus, Plaintiff is entitled to default judgment against the defaulting defendants.

Accordingly, it is hereby,

ORDERED that Plaintiff State Farm Automobile Insurance Company's motion for default judgment is denied to the extent it seeks to enter default judgment against Defendant Ideal Care Pharmacy, Inc; and it is further

ORDERED that Defendant Ideal Care Pharmacy, Inc.'s motion to compel Plaintiff State Farm Automobile Insurance Company's acceptance of its Answer is granted, and the Answer 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 Plaintiff State Farm Automobile Insurance Company's motion for default judgment against Defendants Bay Medical, P.C., Citimed Complete Medical Care, P.C., LR Medical, PLLC, Sooraj Poonawala, D.O., SP Nurse Practitioner in Adult Health, P.C., World Best Medical Supply, Inc., Headlam Medical Professional Corporation and Chanel Gonzalez is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that State Farm Automobile Insurance Company, owes no duty to provide no-fault reimbursements, sums, monies, damages, awards and/or benefits to Bay Medical, P.C., Citimed Complete Medical Care, P.C., LR Medical, PLLC, Sooraj Poonawala, D.O., SP Nurse Practitioner in Adult Health, P.C., World Best Medical Supply, Inc., Headlam Medical Professional Corporation and Chanel Gonzalez, 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 for the alleged incident of August 27, 2020 (also referenced as State Farm Fire Automobile Insurance Company claim number 33-H270-8Q5) and any such arbitrations and lawsuits are dismissed in accordance with this order; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of Plaintiff State Farm Fire Automobile Insurance Company and against All City Family Healthcare Center, East Coast Medical Group PC, Eclipse Medical Imaging PC, Empire City Laboratories, Lenco Diagnostics, Linden West Medical PC, Nextstep Healing, Inc., Progressive Hudson Anesthesia, LLC, Sedation Vacation Perioperative Medicine PLLC, Surgicore Surgical Center LLC, and Plateene Richards; and it is further

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ORDERED that this action is severed and shall proceed against the remaining defendants Ideal Care Pharmacy, Inc.; and it is further

ORDERED that within 30 days of entry of this decision and order, State Farm Fire Automobile Insurance Company shall serve a copy of this decision and order, with notice of entry, on all parties to this action.

This constitutes the decision and order of the Court.

10/25/2022
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"/>	DENIED	
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