State Farm Mut. Auto. Ins. Co. v AAAMG Leasing Corp.
2022 NY Slip Op 33812(U)
November 9, 2022
Supreme Court, New York County
Docket Number: Index No. 150888/2022
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- v -

AAAMG LEASING CORPORATION, ALL CITY FAMILY HEALTHCARE, INC.,BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C.,COMPREHENSIVE MEDICAL ASSIST, P.C.,HEAL IT MEDICAL SUPPLY, INC.,ISLAND AMBULATORY SURGERY CENTER, LLC,KETAN D. VORA, D.O., P.C.,LENCO DIAGNOSTIC LABORATORIES, INC. A/K/A LENCO DIAGNOSTIC LABORATORY, LR MEDICAL, PLLC,MAZ SUPPLY, INC.,MICHAEL YURYEV, D.O., QUALITY CARE RX, INC.,SOUTH SHORE OSTEOPATHIC MEDICINE, P.C.,TROMBMED NY, INC.,UNIVERSAL BRACE SUPPORT, INC.,VAN LOOM DME USA, INC.,ZWANGER & PESIRI RADIOLOGY GROUP, LLP, LONI C. JACOBS, ANNA MUNIZ, AKBAR MUSTAFA, POWERFUL WILLIAMS, GERALD LYKES, WILLIAMS JACKSON AKA JACKSON WILLIAMS, FREROT SAINT JOUR

Defendant.

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INDEX NO. 150888/2022

MOTION DATE 08/25/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for JUDGMENT - DEFAULT.

In this action for declaratory judgment, plaintiff State Farm Mutual Automobile Insurance Company ("Plaintiff") moves for an order pursuant to CPLR 3215 granting it leave to enter a default judgment against all defendants except for Bay Ridge Orthopedic Associates, P.C. (respectively the "Non-Answering Defendants" and "Bay Ridge Orthopedic"). The action has since been discontinued as against Bay Ridge Orthopedic, which had previously appeared in this action.

BACKGROUND

This action arises out of an alleged February 20, 2020 motor vehicle accident involving a vehicle insured by Plaintiff (the "Insured Vehicle") and driven by defendant Gerald Lykes ("Lykes") and occupied by defendant Williams Jackson a/k/a Jackson Williams ("Jackson") (collectively, "Claimants"). According to Plaintiff, Claimants were driving the Insured Vehicle on February 20, 2020, travelling southbound on Ashford Street in Brooklyn, New York when they collided with another vehicle. The other vehicle was driven by defendant Loni C. Jacobs ("Jacobs") and defendants Anna Muniz ("Muniz"), Akbar Mustafa ("Mustafa"), and Powerful Williams ("Williams") were passengers in it.

The police report indicates that the Claimants alleged injuries but were not removed from the scene by an ambulance. Jacobs and Mustafa also alleged injuries and also were not removed via ambulance. Muniz and Williams did not allege injuries.

Claimants allegedly received medical treatment from defendants AAAMG Leasing Corporation; All City Family Healthcare, Inc.; Bay Ridge Orthopedic; Comprehensive Medical Assist, P.C.; Heal It Medical Supply, Inc.; Island Ambulatory Surgery Center, LC; Ketan D. Vora, D.O., P.C.; Lenco Diagnostic Laboratories Inc. a/k/a Lenco Diagnostic Laboratory; LR Medical, PLLC; Maz Supply, Inc.; Michael Yuryev, D.O.; Quality Care RX, Inc.; South Shore Osteopathic Medicine, P.C.; Trombmed NY, Inc.; Universal Brace Support, Inc.; Van Loom DME USA, Inc.; and Zwanger & Pesiri Radiology Group, LLP (collectively, "Medical Provider Defendants"). Plaintiff alleges that the Medical Provider Defendants have submitted tens of thousands of dollars in medical bills for treatment allegedly provided to the Claimants. Plaintiff subsequently received notice of Claimants' reported injuries and the medical bills purportedly related to the incident.

Plaintiff opened an investigation into the claims arising out of the February 20, 2020 accident and maintains that it developed a belief that the insured, Lykes, made a misrepresentation of his residence and the primary garage location of the Insured Vehicle. According to Plaintiff, the policy address for Lykes is in Newburgh, New York, while Plaintiff believes that Lykes resides in Brooklyn; Plaintiff additionally alleges that Lykes' driver's license contains the Brooklyn address as well. Furthermore, Lykes allegedly procured the relevant policy on February 6, 2020, two weeks before the accident. Finally, Plaintiff alleges that Lykes submitted a paystub that purported to demonstrate his employment with a company based in Newburgh; when Plaintiff asked the company about this, the company representative stated that Lykes never worked for them, that the company had no record of the supposed policy address, and that the company address on the paystub was incorrect.

Plaintiff further questioned the legitimacy of the loss based on additional factors, including, among others: (1) the fact that the Insured Vehicle is an older model that fits the profile of a "crash car" that is used for intentional or staged losses; (2) the other vehicle involved in the crash also allegedly fits the profile of a "crash car" due to its age and the fact that the policy for that vehicle was issued only seven days before the loss; (3) that, when reporting the loss, Lykes gave the name of the Insured Vehicle's passenger as "Andrew" and claimed not to know the passenger's last name; and (4) that the loss follows a common pattern for staged or intentionally caused losses that occur at stop-sign intersections. Plaintiff claims that these facts raise a "strong possibility that the collision was a staged or intentional act, that the alleged injuries of the Claimants did not arise from a covered event," and that Lykes "made a material misrepresentation regarding his residence and primary garage location of the Insured Vehicle when he procured the policy" (NYSCEF Doc. No. 36, Plaintiff Aff in Support ¶ 20).

Based on these beliefs, Plaintiff exercised its rights under the No-Fault Regulations and requested Examinations Under Oath ("EUOs") from the Claimants to confirm the legitimacy of the loss and the necessity of alleged medical treatments and referrals. Plaintiff claims that Jackson violated a condition precedent to coverage under the policy by failing to appear for his EUO on two occasions and accordingly denied all No-Fault claims asserted by Jackson and those asserted by the Medical Provider Defendants on his behalf. Lykes appeared for his EUO; however, Plaintiff also denied all of his No-Fault claims and those submitted on his behalf by the Medical Provider Defendants because Lykes either refused to answer questions that were directly relevant and material to Plaintiff's investigation or gave answers that indicated that he had misrepresented his residence and the primary garage location of the Insured Vehicle (*id*. ¶¶ 23-24). Plaintiff further maintains that Lykes' EUO testimony "established that the loss was staged or intentionally caused" (*id*. ¶ 27).

Plaintiff commenced the present action seeking a declaratory judgment that it has no duty to pay defendants' No-Fault claims on the basis that, *inter alia*, the loss was intentionally caused and/or a staged event, that Claimants' alleged injuries did not arise from an insured incident, that Lykes made material misrepresentations in the procurement of the policy and in the pursuit of his claim, that Lykes and Jackson respectively violated a condition precedent to coverage by failing to sign and return an EUO transcript and by failing to appear for an EUO, and that Lykes failed to cooperate with Plaintiff's investigation of the claim.

DISCUSSION

A party is entitled to default judgment pursuant to CPLR 3215 where it files proof of service of its Summons and Verified Complaint, proof of the facts constituting its claim, and proof of default (CPLR 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept

2016]). Here, Plaintiff has properly filed proof of its service of the Summons and Verified Complaint (NYSCEF Doc. No. 48), has presented proof of the facts supporting its claim (NYSCEF Doc. Nos. 36, 39-45), and proof of default (NYSCEF Doc. No 47).

Intentional Loss and Founded Belief

A No-Fault insurer seeking a declaratory judgment disclaiming coverage on the basis that the collision giving rise to No-Fault claims was intentionally caused or staged, or that the alleged injuries did not arise out of a covered event, must establish as a "fact or founded belief that the alleged injury does not arise out of an insured incident" (*Central Gen. Hosp. v Chubb Grp. Of Ins. Cos.*, 90 NY2d 195, 199 [1997]). In demonstrating the facts constituting its founded belief, an insurer can present circumstantial evidence to prove such facts, provided that a reasonable inference can be drawn from the facts presented (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 894, 895 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779, 781 [3d Dept 2000]). A defaulting defendant is deemed to have admitted the allegations in the complaint by failing to answer (*State Farm Mut. Auto ins. Co. v Surgicore of Jersey City*, 195 AD3d 454, 455 [1st Dept 2021]).

Here, the Court finds that Plaintiff sets forth sufficient facts to support its founded belief that the collision was intentionally caused or staged, or that Claimants' injuries did not arise out of a covered event. The affidavit of Plaintiff's claims specialist states, in relevant part, that the claimants alleged injuries but were not removed from the scene of the accident by an ambulance, that Lykes may have misrepresented his residence and the Insured Vehicle's primary garage location at the time he procured the policy, that both the Insured Vehicle and the other vehicle fit the profile of "crash cars" used in intentional or staged losses, and that Lykes' policy had been taken out only two weeks prior to the collision (NYSCEF Doc. No. 36 at 40-68, Chaparos aff).

Plaintiff also submits a copy of the police report of the February 20, 2020 collision that states that the occupants of both vehicles refused medical attention at the scene (NYSCEF Doc. No. 39, Police Report). Additionally, Plaintiff attaches Lykes' EUO transcript in which he refused to answer relevant questions and gave contradictory or vague answers to questions related to the circumstances of the collision and the details related to his procurement of the policy for the Insured Vehicle (NYSCEF Doc. No. 42, Lykes EUO Transcript). Default judgment is accordingly granted as to Plaintiff's first, second, sixth, and tenth causes of action.

Failure to Appear at EUO and Failure to Subscribe to EUO Transcript

11 NYCRR 65-1.1 requires that a No-Fault claimant fully comply with the terms of coverage in a No-Fault policy as a condition precedent to all claims against an insurer under that policy. A claimant's failure to submit to an EUO constitutes a breach of a condition precedent to coverage under a No-Fault policy and vitiates the policy (*Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]; *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559, 560 [1st Dept 2011]). A request for an EUO is timely when it is made within 15 days of the receipt of a medical provider claim (*Unitrin Direct Ins. Co. v Beckles*, 188 AD3d 620 [1st Dept 2020]), but can also be sought prior to receipt thereof (*Mapfre Ins. Co. of N.Y. v Manoo*, 140 AD3d 468, 469 [1st Dept 2016]). A claimant who appears for an EUO but then fails to subscribe and return the transcript of that EUO also violates a condition precedent to coverage and denial of that claimant's claims is warranted (*Kemper Independence Ins. Co. v Cornerstone Chiropractic, P.C.*, 185 AD3d 468 [1st Dept 2020]; *Hereford Ins. Co. v Forest Hills Med., P.C.*, 172 AD3d 567 [1st Dept 2019]).

Here, Plaintiff has established that Jackson breached a condition precedent to coverage by failing to appear for an EUO on two occasions (NYSCEF Doc. No. 41). Plaintiff has also

established that Lykes breached a condition precedent to coverage by failing to subscribe to his EUO transcript (NYSCEF Doc. No. 43; Lykes EUO Transcript at 80). Default judgment is therefore granted as to Plaintiff's fourth and fifth causes of action.

Insured's Failure to Cooperate with Investigation/Material Misrepresentation

Default judgment is granted on Plaintiff's third, seventh, eighth, ninth, and eleventh causes of action. Plaintiff has demonstrated that it "acted diligently in seeking to bring about" Lykes' cooperation in a manner "reasonably calculated" to obtain his cooperation, and that Lykes' attitude was "one of willful and avowed obstruction" (*Hunter Roberts Constr. Group, LLC v Arch Ins. Co.*, 75 AD3d 404, 410 [1st Dept 2010], quoting *Thrasher v United States Liab. Ins. Co.*, 19 NY2d 159, 168 [1967] [internal quotation marks omitted]). Plaintiff also demonstrates that Lykes made material misrepresentations in obtaining the relevant policy (*see Insurance Co. of N. Am. v Kaplun*, 274 AD2d 293, 298-299 [2d Dept 2000]). Lykes misrepresented his primary address and the primary garage location of the Insured Vehicle; these misrepresentations were material because Plaintiff's knowledge of these facts would have led to its refusal to issue the policy (*see Kiss Constr. NY, Inc. v Rutgers Cas. Ins. Co.*, 61 AD3d 412, 413 [1st Dept 2009], quoting Insurance Law § 3105[b] [internal quotation marks omitted]; Chaparos aff ¶¶ 35-36).

Accordingly, it is hereby:

ORDERED that the motion is granted in its entirety; and it is further

ORDERED AND ADJUDGED that there is no No-Fault coverage for alleged claims related to the alleged February 20, 2020 collision submitted by defendants AAAMG Leasing Corporation; All City Family Healthcare, Inc.; Comprehensive Medical Assist, P.C.; Heal It Medical Supply, Inc.; Island Ambulatory Surgery Center, LC; Ketan D. Vora, D.O., P.C.; Lenco

Diagnostic Laboratories Inc. a/k/a Lenco Diagnostic Laboratory; LR Medical, PLLC; Maz Supply, Inc.; Michael Yuryev, D.O.; Quality Care RX, Inc.; South Shore Osteopathic Medicine, P.C.; Trombmed NY, Inc.; Universal Brace Support, Inc.; Van Loom DME USA, Inc.; and Zwanger & Pesiri Radiology Group, LLP; Frerot Saint Jour; Loni C. Jacobs; Anna Muniz; Akbar Mustafa; Powerful Williams; Gerald Lykes; and Williams Jackson a/k/a Jackson Williams referenced by State Farm Mutual Automobile Insurance Company claim number 52-04X4-79K; and it is further

ORDERED AND ADJUDGED that plaintiff has no duty to defend and indemnify the insured defendant Gerald Lykes for any potential liability claims arising from the alleged February 20, 2020 collision; and it is further

ORDERED AND ADJUDGED that plaintiff has no obligation to cover defendant Gerald Lykes' first party property damage claim for repairs to the insured vehicle.

11/9/2022
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE