

State Farm Mut. Auto. Ins. Co. v Beeharry

2023 NY Slip Op 30887(U)

March 23, 2023

Supreme Court, New York County

Docket Number: Index No. 153265/2022

Judge: Lori S. Sattler

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
COUNTY OF NEW YORK: PART 02TR

-----X

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Plaintiff,

- v -

KRISTENE BEEHARRY, LIJ MEDICAL CENTER, NORTH
SHORE-LIJ MEDICAL, P.C., NORTH SHORE
UNIVERSITY HOSPITAL, SINGH PT PLLC, TRINITY
MEDICAL HEALTHCARE SERVICES P.C.

Defendant.

INDEX NO. 153265/2022

MOTION DATE 12/14/2022,
12/14/2022

MOTION SEQ. NO. 001 001

**DECISION + ORDER ON
MOTION**

-----X

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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 3025(b) granting leave to amend the caption of the Complaint to reflect the proper plaintiff in this action, from “State Farm Mutual Automobile Insurance Company” to “State Farm Fire & Casualty Company.” Plaintiff further moves for an order pursuant to CPLR 3215 granting default judgment against defendants LIJ Medical Center a/k/a Long Island Jewish Medical Center; North Shore-LIJ Medical, P.C.; North Shore University Hospital; Trinity Medical Healthcare Services P.C.; and Kristene Beeharry (“Non-Answering Defendants”). The Non-Answering Defendants have not appeared in this action or submitted opposition to this motion. Defendant Sing PT PLLC has appeared in this action and has not taken a position on this motion.

According to Plaintiff, Beeharry purchased a State Farm auto insurance policy in May 2021 using a Troy, NY address. In August 2021, she was in an accident with another car while driving the insured vehicle in Queens. Beeharry and the other driver gave differing accounts of the accident to the responding police officer (NYSCEF Doc. No. 28). Beeharry stated that she was driving through a green light when the other vehicle came out of nowhere and collided with her. In contrast, the driver of the other vehicle told the officer that Beeharry ran through the light and collided with his vehicle. The police report listed Beeharry as having a Queens address.

Beeharry subsequently submitted a No-Fault claim to Plaintiff, which Plaintiff found questionable because of the discrepancy between the policy address and the address listed for Beeharry on her application for No-Fault benefits, driver's license, police report, and vehicle registration. Plaintiff also alleges that Beeharry submitted claims for medical treatment received in downstate New York, despite purportedly living in Troy.

Plaintiff requested an examination under oath (EUO) from Beeharry to confirm the legitimacy of her claims. Beeharry appeared for her third scheduled EUO in December 2021, at which she testified that, at the time, she lived in Jamaica, Queens and had done so for 12 years; that she never lived outside New York City or at the at the policy address in Troy; that in May 2021 she was living at a different address in Queens Village taking care of her sick father and that the vehicle is garaged there. She further testified that she acquired the policy via an independent insurance broker – whose name or employer she did not know – and this broker filled out the policy application for her over the phone and provided the Troy address because using it would get her a better rate for the insurance policy. Plaintiff maintains that it further investigated Beeharry's EUO claims and found no evidence regarding her account of the call with the insurance broker.

Plaintiff maintains it requested that Beeharry subscribe to her EUO transcript in an email to her counsel, Bruce Montague & Partners. However, Beeharry allegedly failed to subscribe to and return her transcript to Plaintiff, which accordingly denied her No-Fault claims.

Plaintiff commenced this action on April 14, 2022. It seeks a declaratory judgment that, *inter alia*, it has no duty to provide No-Fault benefits for any claims submitted by or on behalf of Beeharry because of her purported material misrepresentations made in acquiring her policy and her failure to subscribe to and return her EUO transcript. Plaintiff now moves to modify the caption of the Complaint and for default judgment against the Non-Answering Defendants on these causes of action.

The branch of Plaintiff's motion to amend the Complaint to reflect the proper plaintiff, State Farm Fire & Casualty Company, is granted. Leave to amend pleadings under 3025(b) "should be freely granted, so long as there is no surprise or prejudice to the opposing party" (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). "Prejudice requires some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position" (*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364, 365 [1st Dept 2007, quoting *Loomis v Civetta Corrino Constr. Corp.*, 54 NY2d 18, 23 [1981] [internal quotation marks omitted]). Here, Defendants are not prejudiced by Plaintiff's seeking to amend the Complaint to reflect the proper plaintiff in this action (*cf. American Home Assurance Co. v Scanlon*, 164 AD2d 751 [1st Dept 2021]).

A party is entitled to default judgment pursuant to CPLR 3215 where it files proof of service of its Summons and 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 its proof of service of the Summons and Complaint on the Non-

Answering Defendants and proof of the Non-Answering Defendants' default (NYSCEF Doc. No. 25). Plaintiff also presents facts in support of its claim that Beeharry failed to subscribe to her EUO transcript (NYSCEF Doc. Nos. Nos. 34-37).

The Court grants Plaintiff's motion for default judgment against the Non-Answering Defendants. 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 subscribe to and return an EUO transcript constitutes a breach of a condition precedent to coverage under the applicable No-Fault regulations and warrants denial of claims submitted pursuant to a policy regulated thereunder (*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, 568 [1st Dept 2019]). Here, Plaintiff demonstrates that Beeharry failed to subscribe to and return her EUO transcript.

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for a default judgment against defendants LIJ Medical Center a/k/a Long Island Jewish Medical Center; North Shore-LIJ Medical, P.C.; North Shore University Hospital; Trinity Medical Healthcare Services P.C.; and Kristene Beeharry is granted; and it is further

ORDERED that Plaintiff's name within the caption of this action is hereby amended from "State Farm Mutual Automobile Insurance Company, and any and all of their subsidiaries, affiliates, underwriting or parent companies," to "State Farm Fire & Casualty Company" to reflect the proper Plaintiff in this action; and it is further

ORDERED, ADJUDGED, and DECLARED that State Farm Fire & Casualty Company is not required to pay any sums, monies, damages, awards and/or benefits to LIJ Medical Center

a/k/a Long Island Jewish Medical Center; North Shore-LIJ Medical, P.C.; North Shore University Hospital; Trinity Medical Healthcare Services P.C.; and Kristene Beeharry, including any and all No-Fault claims arising under the policy regarding the alleged August 25, 2021 collision under the State Farm Fire & Casualty Company claim number 52-23W4-59K; and it is further

ORDERED that the Clerk is directed to enter judgment as against defendants LIJ Medical Center a/k/a Long Island Jewish Medical Center; North Shore-LIJ Medical, P.C.; North Shore University Hospital; Trinity Medical Healthcare Services P.C.; and Kristene Beeharry; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the Court’s records to reflect the proper named Plaintiff pursuant to this Decision and Order.

3/23/2023

DATE



LORI S. SATTLER, 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