

Hereford Ins. Co. v AAMG Leasing Corp.

2023 NY Slip Op 32631(U)

July 31, 2023

Supreme Court, New York County

Docket Number: Index No. 154981/2022

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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HEREFORD INSURANCE COMPANY,

Plaintiff,

INDEX NO. 154981/2022

MOTION DATE 03/23/2023

- v -

MOTION SEQ. NO. 001

AAMG LEASING CORP., ALL CITY FAMILY
HEALTHCARE, BAY RIDGE ORTHOPEDIC
ASSOCIATES, DAMADIAN MRI IN CANARSIE PC, DHD
MEDICAL PC, EAST COAST MED GROUP INC., NAOMED
CLINIC-BIG APPLE, QUALITY CARE RX INC., RIGHT
CHOICE SUPPLY INC., SEDATION VACATION
PERIOPERATIVE MEDICINE PLLC, STATCARE URGENT
AND WALKIN MEDICAL CARE, DANIEL JOHNSON,
RASHEEDA PILGRAM

**DECISION + ORDER ON
MOTION**

Defendant.

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60

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

In this declaratory judgment action, plaintiff Hereford Insurance Company (“Hereford”) moves for an order pursuant to CPLR 3215 granting default judgment against AAMG Leasing Corp., Damadian MRI in Canarsie PC, East Coast Med Group Inc., Naomed Clinic-Big Apple, Quality Care Rx Inc., Right Choice Supply Inc., Sedation Vacation Perioperative Medicine PLLC, and Statcare Urgent and Walkin Medical Care (“Non-Appearing Defendants”).

Defendants Daniel Johnson and Rasheeda Pilgrim (collectively, “Claimants”) oppose the motion.

The Provider Defendants have not interposed an Answer or otherwise appeared in this action.

This action arises out of an alleged motor vehicle accident on October 18, 2021.

Claimants were passengers in a Hereford-insured vehicle in Brooklyn that was purportedly struck by another vehicle. The Claimants subsequently alleged significant bodily injuries from

the purported accident and began receiving medical treatment from defendants All City Family Healthcare, Bayridge Orthopedic Associates, DHD Medical PC, and the Non-Answering Defendants (collectively “Medical Provider Defendants”).

Hereford maintains that it found the legitimacy of these claims questionable due to their magnitude, a written statement from the driver of the insured vehicle that denies that an accident occurred, photographs of the vehicle showing no damage, the lack of a police report for the incident, and the fact that the Claimants “have the same attorney and treat at the same facility” despite having “different addresses” (NYSCEF Doc. No. 43 ¶ 9). Pursuant to its rights under the No-Fault regulations, Hereford sought examinations under oath (“EUOs”) from the Claimants to confirm the legitimacy of their purported loss and any treatment they received from the Medical Provider Defendants. Both Claimants appeared for their respective EUOs. However, Hereford contends that their testimonies raised further issues as to the legitimacy of their claims.

Consequently, Hereford claims that it maintains a founded belief that the Claimants’ injuries and their No-Fault treatment by the Medical Provider Defendants were not causally related to the alleged accident and/or did not arise from an insured event. Hereford denied these claims and commenced this action on June 13, 2022 seeking to disclaim coverage under the No-Fault regulations and the applicable policy. Its Amended Complaint sets forth two causes of action for declaratory judgment disclaiming coverage for defendants based on its founded belief that the Claimants’ alleged injuries and subsequent treatment were not causally related to the alleged accident and the Claimants’ purported failure to subscribe to their EUO transcripts.

Hereford now moves for default judgment against the Non-Appearing Defendants on its first cause of action only. Claimants, along with defendants All City Family Healthcare,

Bayridge Orthopedic Associates, and DHD Medical PC have interposed answers and are not subject to the motion.

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]). Although the defaulting defendant is deemed to have admitted the allegations in a plaintiff's complaint by its failure to answer (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City*, 195 AD3d 454, 455 [1st Dept 2021]), "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Feffer v Malpeso*, 201 AD2d 60, 61 [1st Dept 1994] [internal citations and quotations omitted]). The plaintiff "need only allege enough facts to enable a court to determine that a viable cause of action exists" (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007], quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

Here, Hereford presents affidavits of service of its Summons and Complaint upon the Non-Answering Defendants and proof of their default (NYSCEF Doc. Nos. 51, 52). It also submits purported proof of the facts supporting its founded belief cause of action in the form of an affidavit of its claims adjuster (NYSCEF Doc. No. 44). The adjuster's affidavit bases its conclusions in turn on a purported statement from the insured driver, photographs of the insured vehicle, and Claimants' signed EUO transcripts (NYSCEF Doc. Nos. 45, 46, 49).

An insurer may assert a lack of coverage defense based on the fact or founded belief that a claimant's alleged injury did not arise out of a covered incident (*Cent. Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 201 [1997]). In demonstrating the facts supporting its

founded belief, an insurer may present circumstantial evidence to prove such facts, provided that a reasonable inference can be drawn from them (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779, 781 [3d Dept 2000]).

Here, the Court finds that Hereford fails to submit sufficient proof of facts in support of its founded belief cause of action. Although Hereford submits an affidavit from its claims adjuster that sets forth the reasons for its founded belief, the factual record submitted by Hereford is insufficient to support a reasonable inference for these conclusions. For instance, the adjuster affidavit references the insured driver’s written statement, purportedly corroborated by photographs of the undamaged insured vehicle, that no collision took place. These pieces of evidence are contradicted by the Claimants’ executed EUO testimonies, which each state that the insured vehicle was rear ended while at a stoplight. Both Claimants also testified that the purported collision caused their knees to hit the seatbacks in front of them, went to the hospital shortly after the accident, and that they received subsequent treatment from various medical providers (NYSCEF Doc. No. 49). Furthermore, the Claimants specifically name some of the Non-Answering Defendants as providers with whom they treated after the accident.

Accordingly, it is hereby:

ORDERED that the motion is denied.

7/31/2023
DATE


LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE