

**State Farm Mut. Auto. Ins. Co. v Bronx Rehabilitation  
Medicine & Physical Therapy, LLC**

2023 NY Slip Op 32644(U)

July 26, 2023

Supreme Court, New York County

Docket Number: Index No. 153006/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12

*Justice*

-----X	INDEX NO.	<u>153006/2021</u>
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	MOTION DATE	<u>08/01/2022</u>
Plaintiff,	MOTION SEQ. NO.	<u>002</u>

- v -

BRONX REHABILITATION MEDICINE AND PHYSICAL THERAPY, LLC, BSS METROPOLITAN MEDICAL DIAGNOSTIC, P.C., DIVERSIFIED ORTHOTICS, INC., MZY ACUPUNCTURE, P.C., NEW YORK SPINE & SPORT REHABILITATION MEDICINE, P.C., PULSE MEDICAL CARE, P.C., THROGS NECK MEDICAL SERVICES, P.C., THROGS NECK MULTICARE, P.C., TREMONT CHEMIST, LOUIS ROSE, M.D., HABIB M. MONAS, ZWANGER & PESIRI RADIOLOGY GROUP, LLP, and RIDHA FELLAH,

**DECISION + ORDER ON MOTION**

Defendants.

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff State Farm Mutual Automobile Insurance Company moves, pursuant to CPLR 3215, for a default judgment against defendants Bronx Rehabilitation Medicine and Physical Therapy, LLC, BSS Metropolitan Medical Diagnostic, P.C., Diversified Orthotics, Inc., MZY Acupuncture, P.C., New York Spine & Sport Rehabilitation Medicine, P.C., Throgs Neck Medical Services, P.C., Throgs Neck Multicare, P.C., Louis Rose, M.D. (Rose), and Habib M. Monas (Monas) and Ridha Fellah (Fellah) (collectively, the defaulting defendants).

**I. Background**

This action arises out of a motor vehicle accident that occurred on January 14, 2020, at the intersection of Prospect Avenue and East 187th Street, Bronx County, when the vehicle owned by nonparty Juan Pablo Tenesaca Huerta and operated by nonparty Victor Tenesaca Huerta (Huerta),

allegedly came into contact with Fella, who was operating an electric wheelchair. At the time of the alleged accident, Huerta's vehicle was insured by plaintiff. The insurance policy provided coverage for any person who sustained personal injuries arising out of the use or operation of the Huerta vehicle in New York, and included uninsured, supplementary uninsured, underinsured and liability coverage (NY St Cts Elec Filing [NYSCEF] Doc No. 40, Harlan R. Schreiber [Schreiber] affirmation, exhibit H, Timothy Dacey aff, ¶ 14).

Following the accident, Fella sought medical treatment from defendants. Upon receiving Fella's claim for no-fault benefits related to the subject accident, plaintiff assigned claim no. 20-C790-7B3 to those claims (*id.*, ¶ 13). Plaintiff also undertook an investigation into the accident. Fella appeared for an examination under oath (EUO) (NYSCEF Doc No. 41, Schreiber affirmation, exhibit C, ¶ 26). Plaintiff alleges that Fella "presented questionable testimony that did not substantiate his version of the incident," and failed to return an executed copy of his EUO transcript (*id.*, ¶¶ 25-26).

As to the happening of the accident, Huerta avers that he was making a right turn onto 187th Street when Fella, who was operating a motorized wheelchair, entered the crosswalk five feet in front of him (NYSCEF Doc No. 40, Schreiber affirmation, exhibit B, Huerta aff, ¶6). Huerta avers that he stopped his vehicle without coming into contact with Fella, and that Fella then "fell out" of the wheelchair (*id.*, ¶¶ 7-8). Nonparty Sandra Reyes (Reyes), a school crossing guard employed by the New York City Police Department, avers that she was directing traffic at the subject intersection when the alleged accident occurred (NYSCEF Doc No. 45, Schreiber affirmation, exhibit G, Reyes aff, ¶¶ 3-4). Reyes avers that she observed Huerta's vehicle stopped at the red light at the intersection (*id.*, ¶ 4). When the traffic light governing Huerta's lane turned green, she observed Fella in a wheelchair attempt to cross in the crosswalk, even though Huerta

had the right of way (*id.*, ¶¶ 6-7). Reyes further avers that she directed Fellah not to cross, but he disregarded her instruction (*id.* ¶ 7). Reyes states that Huerta's vehicle never struck Fellah, that Huerta's vehicle did not knock Fellah's wheelchair over, and that she saw Fellah throw himself out of the wheelchair (*id.*, ¶¶ 8-9).

Plaintiff concluded that Fellah's alleged injuries and subsequent medical treatment were not causally related to or did not arise from the subject accident and denied all claims on those grounds (NYSCEF Doc No. 41, ¶ 27).

Plaintiff then commenced this action on March 26, 2021 by filing a summons and complaint seeking a declaration that plaintiff owes no duty to pay the no-fault claims submitted by defendants in connection with the January 14, 2020 accident on two grounds. First, it is alleged that Fellah breached a condition precedent by failing to subscribe and return the EUO transcript (first cause of action). Second, it is alleged that there is no coverage based on the founded belief that Fellah's injuries are not causally related to January 14, 2020 accident (second cause of action). Plaintiff also seeks a permanent stay of all arbitrations or lawsuits related to Fellah's no-fault claims (third cause of action). The action has since been discontinued against defendants Zwanger & Pesiri Radiology Group, LLP, Pulse Medical Care, P.C., and Tremont Chemist and (NYSCEF Doc Nos. 19, 33 and 36).

Plaintiff now moves for a default judgment against the defaulting defendants. None of the defaulting defendants have submitted opposition.

## II. Discussion

A motion for a default judgment must be supported with "proof of service of the summons and complaint[,] ... proof of the facts constituting the claim, [and] the default." CPLR 3215 (f). The plaintiff must offer "some proof of liability ... to satisfy the court as to the prima facie validity

of the uncontested cause of action.” *Feffer v Malpeso*, 210 AD2d 60, 61 (1st Dept 1994). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” *Id.* “[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim.” is sufficient. *Beltre v Babu*, 32 AD3d 722, 723 (1st Dept 2006). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages.” *Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 (1984).

Here, the affidavits of service submitted on the motion demonstrate that plaintiff served Bronx Rehabilitation Medicine and Physical Therapy, LLC, BSS Metropolitan Medical Diagnostic, P.C., Diversified Orthotics, Inc., MZY Acupuncture, P.C., New York Spine & Sport Rehabilitation Medicine, P.C., Throgs Neck Medical Services, P.C., and Throgs Neck Multicare, P.C. with process by delivering the summons and complaint to the Secretary of State in Albany on March 31, 2021 (NYSCEF Doc No. 42, Schreiber affirmation, exhibit D). Plaintiff served Monas on March 30, 2021 by delivering the summons and complaint to Ana Maldonado, a person of suitable age and discretion, at 3795 East Tremont Avenue, Bronx, New York 10465, and by mailing the papers to that address the same day (*id.*). Plaintiff served Rose on March 30, 2021 by delivering the summons and complaint to Sandra Nunez, a person of suitable age and discretion, at 3058 East Tremont Avenue, Bronx, New York 10461, and by mailing the papers to that address the same day (*id.*). Last, plaintiff personally served Fellah with the summons and complaint on April 1, 2021 at 780 East 185th Street, Apartment 1F, Bronx, New York 10460 (*id.*).

Absent from each affidavit of service, however, is proof of service of a mandatory notice of e-filing as required under Uniform Rules for Trial Courts (22 NYCRR) § 202.5-bb (b) (3), which states, in relevant part, that personal service of initiating documents in an action commenced


electronically “shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section.” Plaintiff has failed to demonstrate that the requisite notice was served, and thus, the motion for a default judgment must be denied. *See Pollack, Pollack Isaac & De Cicco LLP v Brach*, 2022 NY Slip Op 30755[U], \*3 (Sup Ct, NY County 2022); *Maynard v Quick Stop Grocery*, 2019 NY Misc LEXIS 24802, \*2 (Sup Ct, Queens County 2019).

Accordingly, it is

ORDERED that the motion brought by State Farm Mutual Automobile Insurance Company for a default judgment against defendants Bronx Rehabilitation Medicine and Physical Therapy, LLC, BSS Metropolitan Medical Diagnostic, P.C., Diversified Orthotics, Inc., MZY Acupuncture, P.C., New York Spine & Sport Rehabilitation Medicine, P.C., Throgs Neck Medical Services, P.C., Throgs Neck Multicare, P.C., Louis Rose, M.D., Habib M. Monas, and Ridha Fellah is denied with leave to renew upon proof of its compliance with Uniform Rules for Trial Courts (22 NYCRR) § 202.5-bb (b) (3).

The foregoing constitutes decision and order of the Court.

7/26/2023  
DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE