

Erie Ins. Co. of N.Y. v Jeannot

2024 NY Slip Op 33032(U)

August 28, 2024

Supreme Court, New York County

Docket Number: Index No. 150196/2024

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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INDEX NO. 150196/2024

ERIE INSURANCE COMPANY OF NEW YORK,

MOTION DATE 05/21/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

JACQUES JEANNOT, ACTIVE LIFE CHIROPRACTIC P.C., ANARAFENA MEDICAL, PLLC, ANTARAM INC., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BANAY PHYSICAL THERAPY P.C., BROWN STONE ACUPUNCTURE P.C., CITY ORTHO TRADING INC., CORONA FAMILY CHIROPRACTIC CARE, P.C., CR MEDICAL CARE, PLLC, DR. RIOTTO CHIROPRACTIC, P.C., EASY CARE MEDICAL SERVICES P.C., EQUIP SERVICES INC., GOAL PHYSICAL THERAPY P.C., JULES F. PARIISIEN, LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., LR MEDICAL, PLLC, MEDEX DIAGNOSTIC AND TREATMENT CENTER, LLC, METROCARE MEDICAL P.C., MODERN RX PHARMACY INC, NEW YORK INTERVENTIONAL PAIN PHYSICIANS, NEXT GENERATION DIAGNOSTIC IMAGING P.C., PROMPT MEDICAL GROUP INC., PROMPT MEDICAL SPINE CARE, PLLC, QUALITY ORTHOPEDICS AND COMPLETE JOINT CARE P.C., RIDGEWOOD DRUG INC., RIGHT CHOICE SUPPLY INC., ROMAN VAYNSHTEYN CHIROPRACTIC, P.C., SKILLMAN CHEMISTS CORP., SUNSET MEDICAL SUPPLY INC, WASSEF MEDICAL SERVICES P.C.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been shown, Plaintiff Erie Insurance Company of New York's ("Plaintiff") motion for default judgment against Defendants Active Life Chiropractic P.C., Aptechka RX Inc., Atlantic Medical & Diagnostic, P.C., Banay Physical Therapy P.C., Brown Stone Acupuncture P.C., City Ortho Trading Inc., Corona Family Chiropractic Care, P.C., CR Medical Care P.L.L.C., Medex

Diagnostic and Treatment Center, LLC, Metrocare Medical P.C., Modern RX Pharmacy Inc, Prompt Medical Spine Care, PLLC, Quality Orthopedics and Complete Joint Care P.C., Right Choice Supply Inc, and Sunset Medical Supply Inc. (together, “Defaulting Defendants”) is granted.

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]).

The Court finds that Plaintiff has satisfied proof of service with respect to the Defaulting Defendants by filing affidavits of service for each Defaulting Defendant (NYSCEF Doc. 18). Plaintiff has also satisfied its minimal burden of proving the facts constituting its claim by filing an Affidavit of Merit sworn to April 24, 2024 (NYSCEF Doc. 20). Further, Defaulting Defendants have failed to file answers or otherwise appear in this action despite their time for doing so having expired.¹ Therefore, entry of default judgment against the Defaulting Defendants and in favor of Plaintiff is appropriate.

¹ Corona Family Chiropractic Care, P.C. (“CFCC”) was served with the Summons and Verified Complaint through the Secretary of State on January 12, 2024 (NYSCEF Doc. 18 at 11). Pursuant to CPLR 320(a) CFCC was required to file an answer or otherwise appear in this action within 30 days of service of the Summons. However, CFCC did not file its Answer until February 29, 2024, after the expiration of their 30-day deadline (NYSCEF Doc. 11). Plaintiff filed a Notice of Rejection of CFCC’s Answer dated February 29, 2024 (NYSCEF Doc. 12). CFCC has not opposed Plaintiff’s motion for default judgment nor moved to compel Plaintiff to accept its untimely Answer.

Accordingly, it is hereby,

ORDERED that Plaintiff Erie Insurance Company of New York's motion for default judgment against Defaulting Defendants Active Life Chiropractic P.C., Aptechka RX Inc., Atlantic Medical & Diagnostic, P.C., Banay Physical Therapy P.C., Brown Stone Acupuncture P.C., City Ortho Trading Inc., Corona Family Chiropractic Care, P.C., CR Medical Care P.L.L.C., Medex Diagnostic and Treatment Center, LLC, Metrocare Medical P.C., Modern RX Pharmacy Inc, Prompt Medical Spine Care, PLLC, Quality Orthopedics and Complete Joint Care P.C., Right Choice Supply Inc, and Sunset Medical Supply Inc. is granted; and it is further

ORDERED, ADJUDGED and DECLARED that Plaintiff Erie Insurance Company of New York owes no duty to Defaulting Defendants Active Life Chiropractic P.C., Aptechka RX Inc., Atlantic Medical & Diagnostic, P.C., Banay Physical Therapy P.C., Brown Stone Acupuncture P.C., City Ortho Trading Inc., Corona Family Chiropractic Care, P.C., CR Medical Care P.L.L.C., Medex Diagnostic and Treatment Center, LLC, Metrocare Medical P.C., Modern RX Pharmacy Inc, Prompt Medical Spine Care, PLLC, Quality Orthopedics and Complete Joint Care P.C., Right Choice Supply Inc, and Sunset Medical Supply Inc. to pay No-Fault claims with respect to the January 30, 2023 collision referenced in the Complaint; and it is further

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ORDERED, ADJUDGED and DECLARED that Defaulting Defendants Active Life Chiropractic P.C., Aptechka RX Inc., Atlantic Medical & Diagnostic, P.C., Banay Physical Therapy P.C., Brown Stone Acupuncture P.C., City Ortho Trading Inc., Corona Family Chiropractic Care, P.C., CR Medical Care P.L.L.C., Medex Diagnostic and Treatment Center, LLC, Metrocare Medical P.C., Modern RX Pharmacy Inc, Prompt Medical Spine Care, PLLC, Quality Orthopedics and Complete Joint Care P.C., Right Choice Supply Inc, and Sunset Medical Supply Inc. have no rights to collect No-Fault benefits relating to the January 30, 2023 collision referenced in the Complaint; and it is further

ORDERED, ADJUDGED and DECLARED that all lawsuits or arbitrations brought by Defaulting Defendants Active Life Chiropractic P.C., Aptechka RX Inc., Atlantic Medical & Diagnostic, P.C., Banay Physical Therapy P.C., Brown Stone Acupuncture P.C., City Ortho Trading Inc., Corona Family Chiropractic Care, P.C., CR Medical Care P.L.L.C., Medex Diagnostic and Treatment Center, LLC, Metrocare Medical P.C., Modern RX Pharmacy Inc, Prompt Medical Spine Care, PLLC, Quality Orthopedics and Complete Joint Care P.C., Right Choice Supply Inc, and Sunset Medical Supply Inc. relating to No-Fault claims for services allegedly rendered to Defendant Jacques Jeannot relating to the January 30, 2023 collision referenced in the Complaint are permanently stayed; and it is further

ORDERED that the active parties in this case are directed to submit a proposed Preliminary Conference Order to the Court on or before October 7, 2024 via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed Preliminary Conference Order, the parties are directed to appear for an in-person preliminary conference with the Court on October 9, 2024 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff Erie Insurance Company of New York shall serve a copy of this Decision and Order, with notice of entry, on all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

8/28/2024
DATE

Mary V. Rosado JSC
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	<input type="checkbox"/>
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