

Alpha Prop. Cas. Ins. Co. v Cruz

2024 NY Slip Op 33372(U)

September 25, 2024

Supreme Court, New York County

Docket Number: Index No. 157134/2022

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

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ALPHA PROPERTY CASUALTY INSURANCE COMPANY,

Plaintiff,

- v -

JENNIFER CRUZ, JESSICA MALTEZ-GRANADOS, MARIA
VAZQUEZ DE CRUZ, NELSON CRUZ MALTEZ, CLINTON
MEDICAL OFFICE, P.C., NASSAU OPEN MRI, P.C., P & G
PHARMACY, INC., RABU CHIROPRACTIC & DIAGNOSTIC
SERVICES P.C., STAND-UP MRI OF CARLE PLACE,
P.C., SUESSERMAN CHIROPRACTIC, P.C.

Defendant.

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INDEX NO. 157134/2022
MOTION DATE 10/05/2023
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In August 2022, plaintiff Alpha Property Casualty Insurance Company commenced this declaratory judgment action against four individual defendants and various medical provider defendants, including Clinton Medical Office, P.C., against whom Alpha sought orders declaring that it had no duty to provide No-Fault reimbursements for claims arising out of the motor vehicle policy associated with individual defendant Nelson Cruz Maltez. In this motion sequence (002), Clinton Medical seeks to vacate the Court’s Decision and Order dated April 13, 2023, in which it granted Alpha’s motion for a default judgment. Alpha opposes the motion in its entirety. For the following reasons, Clinton Medical’s motion to vacate is denied.

BACKGROUND

This action arises from an alleged motor vehicle accident on June 17, 2021, out of which Clinton Medical provided Maltez with approximately \$7,460 in medical treatment/services. Alpha denied coverage under Maltez’s subject policy based upon an alleged founded belief that the accident did not occur as stated by the individual defendants. In May 2022, Clinton Medical filed an arbitration proceeding with the American Arbitration Association to recover for the unpaid medical services. Arbitrator Christopher Persad conducted a hearing on October 4, 2022 (NYSCEF doc. no. 51, arbitration award), at which Alpha participated and argued that it properly denied coverage based on the belief that the injuries and treatments were unrelated to the underlying collision. (NYSCEF doc. no. 50, Alpha’s Letter to the AAA.) On November 3, 2023, the arbitrator issued his Arbitration Award (hereinafter, the “Award”) in favor of Clinton Medical and awarded it the \$7,460 it sought. (NYSCEF doc. no. 51.) On January 31, 2023, a

Master Arbitrator issued her award, finding that the lower arbitrator's decision was "clearly not arbitrary and capricious" and that the "law used by the arbitrator was not incorrect."

On August 20, 2022, after Clinton Medical had commenced the arbitration proceeding but before either arbitrator had issued their decisions, Alpha commenced the instant declaratory judgment action. Instead of personally serving Clinton Medical's attorney in the arbitration proceeding, Alpha completed service through the New York Secretary of State pursuant to New York Business Corporation Law § 306. (NYSCEF doc. no. 2, affidavit of service.) On December 12, 2022 (after the first Award had been issued against it), Alpha moved for a default judgment under CPLR 3215 for Clinton Medical's failure to appear in this action. Alpha's moving papers omitted any reference to the arbitration proceeding and the Award itself. (See NYSCEF doc. no. 13, affidavit in support of default judgment.) This Court then issued the April 13, 2023 Decision and Order granting Alpha's motion for a default judgment, declaring that it, "by reason of no coverage, is not required to pay any sums, monies, damages, awards and/or benefits to...Clinton Medical." (NYSCEF doc. no. 43.)

Four days later, on April 17, 2023, Alpha filed a De Novo Action in the Supreme Court, New York County, entitled *Alpha Property & Casualty Co., et al., v Clinton Medical Office, PC* (Index No. 153494/2023[Lyle, J.]) under Insurance Law § 5106 (c), which permits de novo adjudication of a no-fault insurance claim where the master arbitrator's award is \$5,000 or greater. It completed service through the Secretary of State and N.Y. Bus. Corp. Law § 306. (Index No. 153494, NYSCEF doc. no. 2, affidavit of service.) Clinton Medical again failed to timely appear. Thereafter, Alpha moved for summary judgment pursuant to CPLR 3212 on the grounds that Clinton Medical's claim for reimbursement was precluded by the doctrine of res judicata and, specifically, the default judgment entered in this action. (Index No. 153494, NYSCEF doc. no. 21, notice of motion.) Clinton Medical initially filed an opposition to the motion but withdrew it by Letter to the Court. As such, the Court granted Alpha's summary judgment motion on August 7, 2023 (Index No. 153494, NYSCEF doc. no. 36), or nearly seven months after the Master Arbitrator issued her award.

On the current motion, Clinton Medical seeks to vacate the April 2023 Decision under CPLR 5015. It contends that (1) it has a reasonable excuse for failing to appear since Alpha intentionally served it via the Secretary of State and Bus. Corp. Law § 306 and not via counsel and CPLR 308, despite knowing that counsel was, at the time, representing it in the arbitration proceedings, and (2) the two arbitration awards constitute a meritorious defense to Alpha's declaratory judgment action, especially since—it contends—Alpha was not entitled to De Novo review under Insurance Law § 5106 (c). In opposition, at the outset, Alpha asserts that the motion must be denied as Clinton Medical has not offered an affidavit of an individual with personal knowledge. As to Clinton Medical's substantive arguments under CPLR 5015, Alpha contends that Clinton Medical has failed to proffer a reasonable excuse for defaulting since, even though service was not completed through Rule 308, it was nonetheless properly served. Further, it contends that the judgments entered in both Supreme Court cases are final adjudications, whereas the two arbitration awards are not.

DISCUSSION

“A defendant seeking to vacate a default under [CPLR 5015 (a)] must demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a meritorious defense to the action.” (*Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141 [1986] [citations omitted].) “The court may grant a motion to vacate a default on grounds of excusable default and a showing of a meritorious defense, if the motion is made within one year after service of the order entered on default, with written notice of its entry.” (*Marston v Cole*, 147 AD3d 678, 678 [1st Dept 2017] [citations omitted].) What constitutes a reasonable excuse for a default generally lies within the sound discretion of the motion court. (*See Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411, 413 [1st Dept 2011].)

Here, Alpha has established that it properly served Clinton Medical via the Secretary of State and that Clinton Medical’s moving papers do not proffer an excuse as to why it failed to appear. In merely stating that Alpha intentionally failed to serve the attorney of record in the arbitration matter, Clinton Medical’s counsel fails to address, let alone provide authority for, why the Court should overlook proper service of the commencement papers through the Secretary of State. (*See* NYSCEF doc. no. 48 at ¶ 21, counsel affirmation.) Further, the Court’s own research has not uncovered caselaw to support the proposition that, under these circumstances, Alpha was obligated to personally serve the summons and complaint on its adversary’s attorney instead of serving the corporation itself. Because the Court finds that Clinton Medical has not demonstrated a reasonable excuse, it is not entitled to the relief it seeks. (*See Tao Liu v Sobin Chang*, 227 AD3d 410, 411 [1st Dept 2024].)

CPLR 317 provides:¹

“[A] person served with a summons other than by personal delivery to him or his agent...who does not appear may be allowed to defend the action within one year after he obtains knowledge of the entry of the judgment...upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense.” (CPLR 317.)

Unlike with CPLR 5015, to vacate a default judgment under CPLR 317, a defendant does not need to demonstrate a reasonable excuse for its delay. (*Eugene Di Lorenzo Inc.*, 67 NY2d at 141.) Because delivery of process to the Secretary of State is not considered “personal delivery,” corporate defendants may avail themselves of this rule and obtain relief. However, a conclusory and unsubstantiated denial of receipt of the summons and complaint is insufficient to establish lack of notice.” (*Gray v Goodluck-Hedge*, 208 AD3d 1221, 1223 [2d Dept 2022].) Here, as described above, since Clinton Medical’s argument that Alpha should have served the summons and complaint personally under CPLR 308 “amount[s] to nothing more than a mere denial of

¹ Although Clinton Medical does not advance this CPLR provision as a basis for the relief it seeks, the rule does provide an additional avenue to vacate a default where a plaintiff has served the summons and complaint by methods other than personal delivery. Since Alpha addresses the current motion in the context of 317 in its opposition and argues against its application here, the Court will address the issue.

receipt of the summons and complaint” (*see Andrews v Wartburg Receiver, LLC*, 203 AD3d 1000, 1001 [2d Dept 2022]), Clinton Medical is not entitled to vacatur under CPLR 317.

Notwithstanding the above, the Court writes briefly to explain why Clinton Medical has not demonstrated a meritorious defense. Clinton Medical contends that (1) it filed the arbitration proceeding before Alpha commenced this action, (2) both arbitration awards—the lower and Master—were issued before Alpha obtained its default judgment, and (3) those two awards were final adjudications on the merits such that this Court is now bound to enforce them. However, the conclusion in (3) only follows if Clinton Medical’s additional contention—that Alpha is precluded from seeking De Novo review under Insurance Law § 5106 (c)—is correct. It is not.

Insurance Law § 5106 (c) provides, in pertinent part, “the award of a master arbitrator shall be binding. . . provided further that where the amount of such master arbitrator’s award is five thousand dollars or greater, exclusive of interest and attorney’s fees, the insurer or claimant may institute a court action to adjudicate the dispute de novo.” The thrust of Clinton Medical’s contention is that, here, the Master Arbitrator merely confirmed the lower arbitrator’s award in excess of \$5,000, as opposed to issuing an independent award above that amount herself. The problem is that New York courts do not draw this distinction between “issuing” and “affirming” an award. In support, Clinton Medical cites *Avenue C Med., P.C. v Encompass Ins. Of MA* (130 AD3d 764, 764-765 [2d Dept 2015]) but this case merely holds that plaintiff was not entitled to De Novo review because the master arbitrator vacated the lower arbitrator’s award in its entirety and thus did not meet the monetary threshold. The same applies to *Green v Liberty Mut. Ins. Co. Trust* (16 AD 3d 457, 457 [2d Dept]): the Second Department found that the master arbitrator “made no monetary award” and, thus, “the statutory predicate for a de novo court adjudication was not satisfied.” Nor did the Appellate Term in *Imperium Ins. Co. v Innovative Chiropractic Servs., P.C.* (43 Misc. 3d 137 [A] [App. Term 1st Dept 2014]) draw the distinction necessary to support Clinton Medical’s contention. It is clear, then, that Insurance Law § 5106 afforded Alpha the right to commence a De Novo action challenging the arbitrators’ determinations, the court therein properly asserted subject matter jurisdiction over the matter, Clinton Medical failed to timely appear there, and, even after appearing, Clinton Medical had the opportunity to raise the two arbitrators’ awards but instead withdrew its opposition. As such, this court’s Decision and Order dated September 7, 2023 in *Alpha Property & Casualty Co., et al, v Clinton Medical Office, PC* (Index No. 153494/2023 [Lyle, J.]) constitutes a final determination that Clinton Medical is not entitled to reimbursements from Alpha.


Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Clinton Medical Office, P.C.’s motion to vacate the Court’s Decision and Order dated April 13, 2023 pursuant to CPLR 5015 is denied; and it is further

ORDERED that counsel for Alpha Property Casualty Insurance Company shall serve a copy of this order, along with notice of entry, on all parties within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.

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DAKOTA D. RAMSEUR, J.S.C.

9/25/2024
DATE

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