

High Point Prop. & Cas. Ins. Co. v Guarini

2024 NY Slip Op 34125(U)

November 20, 2024

Supreme Court, New York County

Docket Number: Index No. 651656/2023

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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HIGH POINT PROPERTY & CASUALTY INSURANCE
COMPANY,

Plaintiff,

- v -

GIUSEPPE GUARINI, LISA POLANCO, LENOX HILL
RADIOLOGY, LENOX HILL RADIOLOGY & MEDICAL
IMAGING ASSOCIATES, LENOX HILL RADIOLOGY
MEDICAL IMAGING, DAVID S SEELEY, PAPPAS
PHYSICAL MED & REHAB PLLC, XIANGHONG LIAO,
ANDRE FARAH, DHD MEDICAL PC, CITY MEDICAL OF
UPPER EAST SIDE PLLC, CONTEMPORARY
DIAGNOSTIC IMAGING, HUDSON REGIONAL
HOSPITAL, INTEGRATED SPECIALTY ASC LLC, NORTH
AMERICAN SPINE & PAIN INSTITUTE, CENTURION
ANESTHESIA SURGICAL CENTERS LLC, ARDEN M.
KAISMAN, TRIBOROUGH ASC, SEDATION VACATION
PERIOPERATIVE MEDICINE PLLC, LABCORP OF
AMERICA HOLDINGS, HEAL IT MEDICAL SUPPLY C/O
EMPOWER COLLECTIONS

Defendant.

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 63, 64, 65, 66, 67, 69

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 71, 72, 73, 74, 75, 76

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

This declaratory judgment action arises out of a motor vehicle accident on May 3, 2022 involving a vehicle insured by plaintiff High Point Property & Casualty Insurance Company (“Plaintiff”). The vehicle was driven by claimant-defendant Giuseppe Guarini, and claimant-defendant Lisa Polanco was a passenger (collectively “Claimants”). Claimants subsequently alleged they sustained various injuries because of the collision and sought treatment with the

other defendants, which then submitted No-Fault claims to Plaintiff. Plaintiff now moves for a preliminary injunction staying all litigation and arbitration brought by certain non-answering defendants in relation to the accident (Motion Sequence 006) and for a default judgment against those non-answering defendants on their declaratory judgment claim based on a founded belief that Claimants' alleged injuries were not caused by the accident (Motion Sequence 007). The non-answering defendants do not oppose this motion and have not otherwise appeared in this action.

A party is entitled to 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]). Plaintiff has properly filed proof of service of the Summons and Complaint and the non-answering defendants' default. As to the facts constituting its claim, Plaintiff submits NF-10 claim denial forms for each Claimant and an expert report detailing why Claimants' alleged injuries did not arise from the accident (NYSCEF Doc. No. 75).

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]). Furthermore, a plaintiff is not entitled to default judgment where it fails to submit an affidavit or a complaint verified by an individual with personal

knowledge of the claims (*Beltran v Commercial Bldg. Maintenance Corp.*, 206 AD3d 549 [1st Dept 2022]).

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]). An insurer may present circumstantial evidence as proof of the facts in support of its claims, provided that a reasonable inference in support of its founded belief 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]).

The Court finds that Plaintiff fails support its founded belief that Claimants' injuries did not arise out of the operation of the insured vehicle. It fails to submit an affidavit from an individual with personal knowledge of the merits of its claims (*see Beltran*, 206 AD3d at 549). Plaintiff's sole documentary submission in support of its application is an expert letter annexed to the NF-10 claim denial forms. This letter is insufficient to satisfy its burden under CPLR 3215. The letter states that it is based on documentary evidence gathered during Plaintiff's investigation, including the Claimants' Examinations Under Oath, medical records, and medical reports. None of these supporting documents are annexed to the motion. Based on this submission, Plaintiff fails to demonstrate its founded belief claim as the Court cannot draw a reasonable inference in favor of its claim from this document alone. Accordingly, Plaintiff's motion for default judgment against the non-answering defendants is denied.

All other relief sought and not addressed herein is denied.

Accordingly, it is hereby:

ORDERED that the motions are denied in their entireties. A Preliminary Conference shall be held on February 5, 2025 at 9:30 a.m. at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.

11/20/2024

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