

State Farm Fire & Cas. Ins. Co. v Anderson
2024 NY Slip Op 35697(U)
March 22, 2024
Supreme Court, Nassau County
Docket Number: Index No. 602952/23
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

**STATE FARM FIRE AND CASUALTY
INSURANCE COMPANY,**

Plaintiff(s),

-against-

**MARCK ANDERSON, VLADMIR SMITH,
JEAN SCOTT, ALVIN MARTIN
ATLANTIC SUPPLY CORP.,
BORUKHOV RADIOLOGY PLLC.
d/b/a HIGHLINE RADIOLOGY,
COMPREHENSIVE DIAGNOSTICS AND
IMAGING P.C., EM MEDICAL SUPPLIES
CORP., OLGA GIBBONS, M.D., GLOBAL
TECH DIAGNOSTIC, INC. GORDON C.
DAVIS MEDICAL, P.C., H. LEVITAN
MEDICAL P.C., INSPIRE FAMILY
HEALTH NP, P.C., PG PSYCHOLOGICAL
SERVICES, P.C., SENIORCARE911, LCC,
WELLNESS REHABILITATION PT P.C.,**

Defendant(s)

X

**TRIAL/IAS, PART 8
NASSAU COUNTY**

Index No. 602952/23

**Motion Seq. No.: 001
Motion Submitted: 1/30/24**

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X

Plaintiff, State Farm Fire and Casualty Insurance Company (State Farm), brings this motion for leave to file a default judgment pursuant to CPLR §3215 on the grounds that Defendants, Marck Anderson (Anderson), Vladimir Smith (Smith), Alvin Martin (Martin), Atlantic Supply Corp. (Atlantic), Comprehensive Diagnostics and Imaging P.C. (Comprehensive), EM Medical Supplies Corp. (EM), Olga Gibbons, M.D. (Dr. Gibbons), Global Tech Diagnostic, Inc. (Global), Gordon C. Davis Medical, P.C. (Davis), H. Levitan Medical P.C. (H. Levitan), Inspire Family Health NP, PC. (Inspire), Seniorcare911, LCC (Seniorcare911) and Wellness Rehabilitation PT P.C. (Wellness) failed to appear in this action.¹ There is no opposition.

State Farm commenced this action by service of a summons and complaint dated February 10, 2023. According to the complaint, State Farm seeks a declaration that it does not have to pay for or reimburse the Defendants named in this motion for certain alleged services they provided, or were provided, to pursuant to the No-Fault law.

The affidavits of service indicate that Anderson was served by service upon a person of suitable age and discretion on March 7, 2023 at his residence. On March 8, 2023, the process server mailed a copy of the summons and complaint to Anderson at his residence. Smith was served by personal delivery at his residence on March 7, 2023.

¹Co-Defendants PG Psychological Services, and P.C., Borukhov Radiology PLLC d/b/a Highline Radiology appeared in this action. Dr. Gibbons and Davis filed answers that were rejected as untimely.

Martin was served by personal delivery at his residence on March 7, 2023. Dr. Gibbons was served by service upon a person of suitable age and discretion at her place of business on March 8, 2023. That same day, the process server mailed a copy of the summons and complaint to Dr. Gibbons at her business address. On March 10, 2023, Atlantic, Borukhov, Comprehensive, EM, Global, H. Levitan, Inspire, PG Psychological, Seniorcare911, Wellness, and Davis were all served by service upon the Secretary of State.

A plaintiff seeking a default judgment under CPLR §3215 must present *prima facie* proof of a cause of action, and while a default admits all factual allegations of the complaint and all reasonable inferences therefrom, it does not admit legal conclusions which are reserved for the court's determination (*McGee v. Dunn*, 75 A.D.3d 624 [2d Dept. 2010]; *Green v. Dolphy Constr. Co.*, 187 A.D.2d 635 [2d Dept. 1992]; *Silberstein v. Presbyterian Hospital in the City of New York*, 96 A.D.2d 1096 [2d Dept. 1983]). CPLR § 3215 (a) permits a plaintiff to seek default when the defendant has failed to appear. “On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting plaintiff's claim, and proof of the defaulting party's default in answering or appearing” (*Atlantic Cas. Ins. Co. v. RJNJ Servs., Inc.*, 89 AD3d 649 [2d Dept. 2011]). “CPLR § 3215(f) states that upon any application for judgment by default, proof of facts constituting claim, default, and amount due are to be set forth in affidavit made by the party” (*HSBC Bank USA, N.A. v. Betts*, 67 AD3d 735, 736 [2d Dept. 2009]).

A plaintiff seeking to assert jurisdiction over a defendant “bears the ultimate burden of proving by a preponderance of the evidence that jurisdiction over the defendant was obtained by proper service of process” (*Gottesman v. Friedman*, 90 AD3d 608, 609 [2d Dept. 2011]). Service of process must be made in strict compliance with statutory methods for effecting personal service upon a natural person pursuant to CPLR § 308; (*id.*).

Herein, State Farm submits the affidavit of merit of Lori Madigan, a State Farm claims specialist. Due to certain irregularities, Ms. Madigan initiated an investigation of subject accident. As part of the investigation, the Defendant named in this motion were noticed to appear for examinations under oath (EUOs) on multiple occasions. According to the affidavit of Richard C. Aitken, Esq., State Farm’s counsel, he was present on each dated the Defendants named in this motion were noticed to appear for their EUOs. Had they appeared, Mr. Aitken was prepared to conduct the EUOs. None of the Defendants named in this motion ever appeared for their EUOs

The court finds all Defendants named in this motion were all properly served and have not appeared. Further, State Farm submits the affidavits of Ms. Madigan and Mr. Aitken, satisfying the requirement for affidavits of merit. As the Defendants named in this motion have not appeared, and have not opposed this motion, leave for a default judgment declaring that State Farm does not have to pay the non-appearing Defendants for any services allegedly provided or received will be granted.

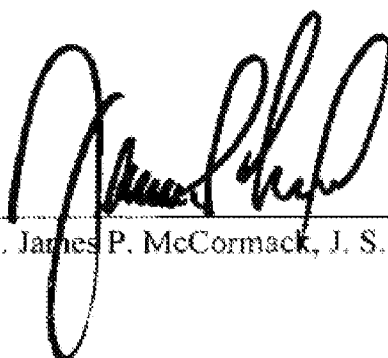
Accordingly, it is hereby

ORDERED, that State Farm's motion for an order pursuant to CPLR §3215, directing a default judgment against the Defendants named in this motion is **GRANTED** in its entirety.

This constitutes the decision and order of the court.

Settle judgment on notice.

Dated: March 22, 2024
Mineola, N.Y.

A handwritten signature in black ink, appearing to read 'James P. McCormack', is written over a horizontal line.

Hon. James P. McCormack, J. S. C.

ENTERED

Mar 25 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE