

Progressive Advanced Ins. Co. v Romero
2024 NY Slip Op 35704(U)
April 8, 2024
Supreme Court, Nassau County
Docket Number: Index No. 608959/23
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 2

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PROGRESSIVE ADVANCED INSURANCE COMPANY,

Plaintiff,

-against-

Index No.: 608959/23
Motion Sequence...01
Motion Date...1/25/24
XXXDENNIS ROMERO a/k/a DENNIS ARIEL ROMERO,
FRITZ JOSEPH a/k/a FITZ JOSEPH,
CLIFFORD LOUIS a/k/a LOUIS CLIFFORD,(collectively, the “**Individual Defendants**”)

-and-

AKE SERVICES INC, BHM SUPPLIES, INC.,
BRONX COUNTY MEDICAL CARE, P.C., BRUCE
L. FELDMAN M.D. PLLC, CHAI DIAGNOSTICS
LLC, DIAGNOSTIC NEUROLOGY, P.C.,
INTERVENTIONAL PHYSICAL MEDICINE AND
REHAB OF NEW YORK PLLC, MAXIME COLES
SERVICES a/k/a MAXIME J COLE MD, METAMED
SPORTS & SUPPLY INC., MICHAEL ZWIRBLIA
PSYD, ONE HAND 1 PHYSICAL THERAPY P.C.,
REFUA RX INC, REFUAH DIAGNOSTICS LLC,
SENECA AVENUE ACUPUNCTURE P.C., SHEILA
SOMAN M.D., P.C. and STAR MEDICAL
DIAGNOSTIC, P.C.,(collectively “**Provider Defendants**”)

collectively the Defendants

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Papers Submitted:

Notice of Motion.....x

Upon the foregoing papers, the unopposed motion by the Plaintiff, PROGRESSIVE ADVANCED INSURANCE COMPANY (hereinafter “PROGRESSIVE”), seeking an Order, pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendants¹, DENNIS ROMERO a/k/a DENNIS ARIEL ROMERO (“ROMERO”), FRITZ JOSEPH a/k/a FITZ JOSEPH (“JOSEPH”), CLIFFORD LOUIS a/k/a LOUIS CLIFFORD (“CLIFFORD”) (collectively referred to as “Individual Defendants”), AKE SERVICES INC, BHM SUPPLIES, INC., BRONX COUNTY MEDICAL CARE, P.C., BRUCE L. FELDMAN M.D. PLLC, CHAI DIAGNOSTICS LLC, DIAGNOSTIC NEUROLOGY, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK PLLC, MAXIME COLES SERVICES a/k/a MAXIME J COLE MD, METAMED SPORTS & SUPPLY INC., ONE HAND 1 PHYSICAL THERAPY P.C., REFUA RX INC, REFUAH DIAGNOSTICS LLC, SENECA AVENUE ACUPUNCTURE P.C., SHEILA SOMAN M.D., P.C. and STAR MEDICAL DIAGNOSTIC, P.C. (collectively referred to as “Company Defendants”), is decided as provided herein.

The Plaintiff commenced this action seeking a declaratory judgment that it is not obligated to pay any present or future no-fault claims of the defendants or defend them in any action, lawsuit, or arbitration under an insurance policy issued to Individual Defendants, ROMERO, JOSEPH and CLIFFORD, for any claims arising from an

¹ The Court notes that the Plaintiff does not seek a default motion as against the Defendant, MICHAEL ZWIRBLIA PSYD. Insofar as the Plaintiff has not submitted any proof that this Defendant was served with the Summons and Complaint, this action shall be dismissed against MICHAEL ZWIRBLIA PSYD, as abandoned.

automobile accident that occurred on November 8, 2021 (the “Accident”). The Plaintiff alleges that the Accident is not covered by the Policy as it was a deliberate event. The Plaintiff further asserts that defendants, ROMERO and JOSEPH, did not appear for scheduled examinations under oath (EUO), and therefore the Plaintiff is not obligated to pay any of their no-fault claims (*See* Summons and Verified Complaint, annexed to Motion as Exhibit “A”).

The Plaintiff commenced this action by the electronic filing of a Summons and Verified Complaint on or about June 6, 2023. The Plaintiff established proper service was made upon the Individual Defendants and the Company Defendants, except MAXIME COLES SERVICES a/k/a MAXIME J COLE MD (*See* Affidavits of Service, annexed to Motion as Exhibit “B”).

The Plaintiff purports that personally service was effectuated upon the Company Defendant, MAXIME COLES SERVICES a/k/a MAXIME J COLE MD, by delivering a copy of the Summons and Complaint to “Maxime Coles REGISTERED AGENT” at 18868 Candlewick Dr., Boca Raton, FL 33496 on June 21, 2023 (the “Florida address”) (*Id.*). The Court notes that the Plaintiff proffers four (4) different addresses for said Defendant in the Summons, one of which is the Florida address where service was allegedly made. However, the address proffered for said Defendant in the Request for Judicial Intervention and Notice of Motion is not the Florida address. Furthermore, the Complaint reflects that “the Defendant, MAXIME COLES SERVICES, was a medical provider that was transacting, or is transacting, business in the State of New York” (*See* Verified Complaint, annexed to Motion as Exhibit “A” at ¶ 15). The Plaintiff does not

proffer any explanation, reasonable or otherwise, as to the inconsistencies noted for the address of the Defendant, MAXIME COLES SERVICES a/k/a MAXIME J COLE MD. As such, the motion as to the Defendant, MAXIME COLES SERVICES a/k/a MAXIME J COLE MD, *only*, shall be denied, which shall be without prejudice, and with leave to renew, upon the presentment of proper proof.

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215(f), the movant must provide: (i) proof of service of the summons and complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

Where a defendant is a domestic or authorized foreign corporation that was served pursuant to Business Corporation Law (“BCL”) § 306(b), CPLR § 3215(g)(4)(i) and (ii) requires that an affidavit be submitted demonstrating that the defaulting defendant was provided with additional notice of the summons and complaint and informed that service was originally effectuated pursuant to BCL § 306. Such additional mailing must be made by first class mail upon the defaulting defendant-corporation at least twenty (20) days before the entry of judgment.

Here, the Plaintiff’s motion has been timely filed within one year of the default. The Plaintiff submitted proof that the Defendants, except MAXIME COLES SERVICES a/k/a MAXIME J COLE MD, were duly served with the Summons and Complaint pursuant to the CPLR and BCL. The Plaintiff also submitted proof of compliance with the additional mailing requirements of CPLR § 3215(g)(4)(i), as well as

CPLR § 3215(g)(4)(ii). Since the Complaint was duly verified by the Plaintiff's representative, Christina Plante, the Verified Complaint appropriately serves as sufficient proof of the facts constituting the claim pursuant to CPLR § 3215(f). The Plaintiff also proffered a sworn affidavit from Christina Plante attesting to facts constituting the claim.

It appears from a review of the documentation presented that the necessary parties have been duly served with a notice of this motion and that more than thirty (30) days has elapsed since completion of service. Thus, the within Defaulting Defendants are in default for failing to answer or otherwise appear in this action.

Accordingly, it is hereby

ORDERED, that the unopposed motion by the Plaintiff, PROGRESSIVE ADVANCED INSURANCE COMPANY, seeking an Order, pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendants, DENNIS ROMERO a/k/a DENNIS ARIEL ROMERO, FRITZ JOSEPH a/k/a FITZ JOSEPH, CLIFFORD LOUIS a/k/a LOUIS CLIFFORD, AKE SERVICES INC, BHM SUPPLIES, INC., BRONX COUNTY MEDICAL CARE, P.C., BRUCE L. FELDMAN M.D. PLLC, CHAI DIAGNOSTICS LLC, DIAGNOSTIC NEUROLOGY, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK PLLC, METAMED SPORTS & SUPPLY INC., ONE HAND 1 PHYSICAL THERAPY P.C., REFUA RX INC, REFUAH DIAGNOSTICS LLC, SENECA AVENUE ACUPUNCTURE P.C., SHEILA SOMAN M.D., P.C. and STAR MEDICAL DIAGNOSTIC, P.C., is **GRANTED**; and it is further

ORDERED, that the unopposed motion by the Plaintiff seeking an Order, pursuant to CPLR § 3215, granting a default judgment in its favor as against the Defendant, MAXIME COLES SERVICES a/k/a MAXIME J COLE MD, is **DENIED**; and it is further

ORDERED, that the Plaintiff, PROGRESSIVE ADVANCED INSURANCE COMPANY, is under no obligation to pay, honor, or reimburse the within defaulting Defendants, DENNIS ROMERO a/k/a DENNIS ARIEL ROMERO, FRITZ JOSEPH a/k/a FITZ JOSEPH, CLIFFORD LOUIS a/k/a LOUIS CLIFFORD, AKE SERVICES INC, BHM SUPPLIES, INC., BRONX COUNTY MEDICAL CARE, P.C., BRUCE L. FELDMAN M.D. PLLC, CHAI DIAGNOSTICS LLC, DIAGNOSTIC NEUROLOGY, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK PLLC, METAMED SPORTS & SUPPLY INC., ONE HAND 1 PHYSICAL THERAPY P.C., REFUA RX INC, REFUAH DIAGNOSTICS LLC, SENECA AVENUE ACUPUNCTURE P.C., SHEILA SOMAN M.D., P.C. and STAR MEDICAL DIAGNOSTIC, P.C., for any claims as referenced in the Complaint that were submitted by, or on behalf of the Individual Defendants, DENNIS ROMERO a/k/a DENNIS ARIEL ROMERO, FRITZ JOSEPH a/k/a FITZ JOSEPH, CLIFFORD LOUIS a/k/a LOUIS CLIFFORD; and it is further

ORDERED, that counsel for the Plaintiff shall serve a copy of this Order upon the within Defaulting Defendants at their last known respective address(es) by certified mail, return receipt requested, **AND** by regular mail, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT**; and it is further

ORDERED, that this action is dismissed as against the Defendant,
MICHAEL ZWIRBLIA PSYD, as abandoned.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
April 8, 2024



HON. RANDY SUE MARBER, J.S.C.
XXX

ENTERED

Apr 12 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE