

State Farm Fire & Cas. Co. v Biometric Sign, Inc.

2025 NY Slip Op 33619(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 153233/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

BIOMETRIC SIGN, INC., BSD OS, LLC, CADS ANESTHESIA SERVICES, PLLC, CHAI DIAGNOSTICS, LLC, DIAGNOSTIC NEUROLOGY, P.C., DS MEDICAL DIAGNOSTICS, FAR ROCKAWAY MEDICAL, P.C., FIVE STAR PHARMACY, GLOBAL VERSUS, INC., SHMUEL GOLFEYZ, M.D., GRAND AVENUE SERVICES, INC., GREENTREE PHARMACY, INC., LENOX HILL RADIOLOGY IMAGING, NEEDFUL GOODS CORP., PARS MEDICAL, P.C., PHARMACY ON GRAND, INC., RASHBI DIAGNOSTICS IMAGING, INC., RIGHT CHOICE SUPPLY, INC., RS ORTHO SUPPLY, INC., UPENDRA SINHA, SKYLINE BK, INC., TOPAZ V, INC., U K SINHA PHYSICIAN, P.C., UPTOWN HEALTH CARE MANAGEMENT, INC. D/B/A ETM-ASC AMBULATORY SURGERY CENTER D/B/A EAST TREMONT MEDICAL CENTER, WAY TO REHAB PT, P.C., SHANIQUA BRAMWELL and SHANNALEE GORDON,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65, 66

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

DECISION + ORDER ON MOTION

Upon the foregoing documents, plaintiff State Farm Fire and Casualty Company’s motion is granted on default and for the reasons set forth below.

This no-fault insurance coverage action arises out of a July 8, 2023 motor vehicle collision, in Brooklyn, between a car driven by defendant Shannalee Gordon in which defendant Shaniqua Bramwell was a passenger and another vehicle (NYSCEF Doc. 47 [Summons and Complaint]). Plaintiff-insurer State Farm Fire and Casualty Company (“State Farm”) seeks, inter alia, a

declaration that it is not obligated to provide a defense and coverage for claims purportedly related to an automobile collision because: (1) Gordon failed to appear for her duly and properly scheduled EUO on two or more occasions; (2) it has a founded belief that the collision was staged and that the injuries of Gordon and Bramwell did not arise from an insured incident; and (3) Bramwell failed to return a subscribed copy of her EUO transcript.

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against all medical-provider defendants that were served with and have failed to answer the Summons and Verified Complaint except for¹ “DS Medical Diagnostics, Shmuel Golfeyz, M.D., Lenox Hill Radiology and Medical Imaging Associates, P.C. d/b/a Lenox Hill Radiological Imaging, Pars Medical, P.C., Pharmacy on Grand, Inc., Uptown Health Care Management, Inc. d/b/a ETM-ASC Ambulatory Surgery Center d/b/a East Tremont Medical Center, Shaniqua Bramwell, and Shannalee Gordon” (NYSCEF Doc. No. 42 [emphasis added]; NYSCEF Doc. No. 43 [David F. Boucher, Esq. Affirmation] at 2).

Plaintiff also moves, pursuant to CPLR 306-b, for an extension of time to serve the Complaint on Gordon and Bramwell (“Bramwell”) (collectively, the “Claimants”), and Shmuel Golfeyz, M.D.

DISCUSSION

Plaintiff has the burden of proving that it is entitled to a default judgment against a defendant by submitting “proof of service of the summons and complaint and proof of the facts constituting the claim” (*PV Holding Corp. v AB Quality Health Supply Corp.*, 189 AD3d 645, 646 [1st Dept 2020] citing CPLR 3215[f]). “While [a] declaratory judgment will rarely, if ever, be granted solely on default, plaintiff has sufficiently established the facts of its claim” (*PV Holding*

¹ This action was discontinued as to defendant New York Hand Surgery, P.C. on May 23, 2025 (NYSCEF Do. No. 67 [Stipulation of Discontinuance]).

Corp., 189 AD3d at 646 [1st Dept 2020] citing *Tanenbaum v Allstate Ins. Co.*, 66 AD2d 683, 684 [1st Dept 1978]).

Here, plaintiff has submitted proof that the subject medical-provider defendants were properly served via the Secretary of State (NYSCEF Doc. No. 48) and that it complied with the additional mailing requirements set forth in CPLR 3215(g)(4) (NYSCEF Doc. No. 57 [Amended Notice of Default]). In addition, plaintiff provided proof of proper service and proof of non-military status for the individual defendant, Upendra Sinha, M.D., in compliance with CPLR 308(2) and 50 App USC § 521, respectively (NYSCEF Doc. No. 56 [Status Report Pursuant to Servicemember Civil Relief Act]). The Affirmation of Kayla Kirby establishes that the subject defendants have not answered or otherwise appeared in this action and that their time to do so has since expired (NYSCEF Doc. No. 57 [Amended Notice of Default]). Plaintiff has established that the defaulting defendants have failed to answer the Complaint or to otherwise appear.

Plaintiff has also established the facts constituting its claim through the various affirmations submitted (NYSCEF Doc Nos. 45 [Micki Fraley Affirmation]; 46 [Investigation Affirmation]) and documentary evidence (NYSCEF Doc No. 49 [Police Report], 50 [NF-2 Forms], 51 [CarFax Report], and 53 [Bramwell EUO transcript]), which, taken together, are sufficient to establish plaintiff's founded belief that the accident at issue was staged and that the injuries of Gordon and Bramwell did not arise from an insured incident (*State Farm Mut. Auto. Ins. Co. v AK Global Supply Corp.*, 203 AD3d 556, 558 [1st Dept 2022]).

Even setting the foregoing aside, plaintiff has established that Gordon failed to appear for two timely and properly scheduled EUOs, without good cause (NYSCEF Doc. Nos. 44 [Tomsky Affirmation at 3-4] and 52 [EUO Request Letters and Non-Appearance Affirmations]), vitiating a condition precedent to no-fault coverage (*Kemper Independence Ins. Co. v Adelaida Phys.*

Therapy, P.C., 147 AD3d 437, 438 [1st Dept 2017], citing *Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]). The requirements of 11 NYCRR 65–3.5 and 65–3.6 do not apply to these EUOs, which were scheduled prior to the insurance company’s receipt of a claim form (*Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468, 469 [1st Dept 2016]; see also *State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 455-456 [1st Dept 2021]). Plaintiff has also established that Bramwell failed to subscribe and return the transcript of her EUO (NYSCEF Doc. No. 44, Tomsy affirmation at 4-5), violating another condition precedent to coverage and providing further grounds for the denial of the claims (*Hertz Vehs., LLC v Gejo, LLC*, 161 AD3d 549, 549-550 [1st Dept 2018] [internal citations omitted]). In light of the foregoing, plaintiff’s motion for a default judgment is granted.

Finally, that branch of plaintiff’s motion, pursuant to CPLR 306-b, to extend its time to serve Gordon and Bramwell as well as medical provider defendant Shmuel Golfeyz, M.D., is also granted. Plaintiff has established that the time to serve these defendants should be extended for sixty days from entry of this order (NYSCEF Doc. Nos. 58 [Affidavits of Non-Service] and 46 [Investigation Affirmation]).

Accordingly, it is

ORDERED that the plaintiff State Farm Fire and Casualty Company’s motion seeking a default judgment against the defendants Biometric Sign, Inc., BSD OS, LLC, CADS Anesthesia Services, PLLC, CHAI Diagnostics, LLC, Diagnostic Neurology, P.C., Far Rockaway Medical, P.C., Global Versus, Inc., Greentree Pharmacy, Inc., Needful Goods Corp., Right Choice Supply, Inc., RS Ortho Supply, Inc., Upendra Sinha, Skyline BK, Inc., Topaz V, Inc., U K Sinha Physician, P.C. is granted and the Clerk of the Court is directed to enter judgment accordingly as set forth below; and it is further

ORDERED, ADJUDGED and DECLARED that the plaintiff is not obliged to provide a defense to, and provide coverage for, the defendants Biometric Sign, Inc., BSD OS, LLC, CADS Anesthesia Services, PLLC, CHAI Diagnostics, LLC, Diagnostic Neurology, P.C., Far Rockaway Medical, P.C., Global Versus, Inc., Greentree Pharmacy, Inc., Needful Goods Corp., Right Choice Supply, Inc., RS Ortho Supply, Inc., Upendra Sinha, Skyline BK, Inc., Topaz V, Inc., U K Sinha Physician, P.C. and plaintiff has no obligation to provide No-Fault coverage for the claims arising from the July 8, 2023 loss referenced by claim number 52-52P4-05H in the Complaint; and it is further

ORDERED, ADJUDGED and DECLARED that the plaintiff is not obliged to pay any and all no-fault claims of the defendants Biometric Sign, Inc., BSD OS, LLC, CADS Anesthesia Services, PLLC, CHAI Diagnostics, LLC, Diagnostic Neurology, P.C., Far Rockaway Medical, P.C., Global Versus, Inc., Greentree Pharmacy, Inc., Needful Goods Corp., Right Choice Supply, Inc., RS Ortho Supply, Inc., Upendra Sinha, Skyline BK, Inc., Topaz V, Inc., U K Sinha Physician, P.C. and plaintiff has no obligation to pay any and all No-Fault claims arising from the July 8, 2023 loss referenced by claim number 52-52P4-05H in the Complaint; and it is further

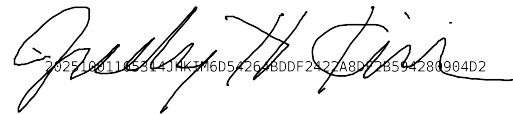
ORDERED, ADJUDGED and DECLARED that all No-Fault lawsuits, arbitrations, awards, judgments, and claims filed by the defendants Biometric Sign, Inc., BSD OS, LLC, CADS Anesthesia Services, PLLC, CHAI Diagnostics, LLC, Diagnostic Neurology, P.C., Far Rockaway Medical, P.C., Global Versus, Inc., Greentree Pharmacy, Inc., Needful Goods Corp., Right Choice Supply, Inc., RS Ortho Supply, Inc., Upendra Sinha, Skyline BK, Inc., Topaz V, Inc., U K Sinha Physician, P.C. are hereby stayed. This stay shall not be a bar against dismissing any such related actions based on theories of res judicata or collateral estoppel where applicable, and it is further

ORDERED that this action is severed and shall proceed against the remaining defendants Grand Avenue Service, Inc., Way to Rehab PT, P.C., Five Star Pharmacy, Rashbi Diagnostics Imaging, Inc.; and it is further

ORDERED that, pursuant to CPLR 306-b, plaintiff is granted a sixty-day extension to serve defendants Shaniqua Bramwell, Shannalee Gordon and Shmuel Golfeyz, M.D.; and it is further

ORDERED that within thirty days of entry, plaintiff shall serve a copy of this decision and order, with notice of entry, upon all parties to this action, and it is further

This constitutes the decision and order of the Court.



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10/1/2025

DATE

HON. JUDY H. KIM, 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