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| <b>Progressive Cas. Ins. Co. v Saturne</b>                                                                                                                                                                                     |
| 2025 NY Slip Op 35452(U)                                                                                                                                                                                                       |
| February 10, 2025                                                                                                                                                                                                              |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 617269/2023                                                                                                                                                                                           |
| Judge: Eileen C. Daly-Sapraicone                                                                                                                                                                                               |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT: HON. EILEEN C. DALY-SAPRAICONE,  
JUSTICE OF THE SUPREME COURT

-----X  
PROGRESSIVE CASUALTY INSURANCE COMPANY,  
Plaintiff,

TRIAL/IAS, PART 19  
Index No.: 617269/2023

-against-

Motion Seq. No.: 001  
Motion Submitted: 11/20/24

DECISION AND ORDER

PETER SATURNE,  
BARBARA FILS-AIME  
A/K/A BARBARA ALTIME  
A/K/A BARBARA MONFORT,  
(Individual Defendants)

ALIGNMENT CHIROPRACTIC P.C.,  
APEX DIAGNOSTICS INC.<sup>1</sup>,  
APTECHKA RX INC.,  
ATLANTIC MEDICAL & DIAGNOSTIC, P.C.,  
BROWN STONE ACUPUNCTURE P.C.,  
DR. RIOTTO CHIROPRACTIC, P.C.,  
ESCO MEDICAL SUPPLY CORP.<sup>2</sup>,  
FOSTER MEDICAL P.C.<sup>3 4</sup>,  
GOAL PHYSICAL THERAPY P.C.<sup>5</sup>,  
HEALTH CHOICE NY MEDICAL, P.C.<sup>6</sup>,  
JASODA DHUPAN NP<sup>7</sup>,  
JULES F PARISIEN<sup>8 9</sup>,  
LIFE PT, P.C.,  
METROCARE MEDICAL P.C.,

<sup>1</sup> Defendant, APEX DIAGNOSTICS INC. filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>2</sup> Defendant, ESCO MEDICAL SUPPLY CORP. filed an Answer on October 31, 2023 (NYSCEF Docket Entry No. 5).

<sup>3</sup> Defendant, FOSTER MEDICAL P.C. filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>4</sup> Defendant, FOSTER MEDICAL, P.C. filed an additional Answer on December 13, 2023 (NYSCEF Docket Entry No. 30).

<sup>5</sup> Defendant, GOAL PHYSICAL THERAPY P.C. filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>6</sup> Defendant, HEALTH CHOICE NY MEDICAL, P.C. filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>7</sup> Defendant, JASODA DHUPAN NP filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>8</sup> Defendant, JULES F PARISIEN filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>9</sup> Defendant, JULES F PARISIEN filed an additional Answer on December 13, 2023 (NYSCEF Docket Entry No. 30).

MICHAEL BANAY PHYSICAL THERAPY P.C.,  
 NEW YORK INJURY CHIROPRACTIC REHAB P.C.,  
 NOVA MEDICAL DIAGNOSTIC P.C.<sup>10</sup>,  
 SHERIDAN RX INC AKA SHERIDAN PHARMACY,  
 SKILLMAN CHEMISTS CORP.,  
 STAR CHIROPRACTIC P.C.<sup>11</sup>,  
 SUPPLIES MADE EASY INC.,  
 SURGIMED CARE INC, and  
 U.K. SINHA PHYSICIAN P.C.,

*(Healthcare Provider Defendants)*  
 Collectively, Defendants.

-----X  
 The following papers were read on this motion

NYSCEF  
 DOCUMENT NUMBERS

Notice of Motion, Affidavit, Affirmation, Exhibits ..... 37 – 47

Plaintiff, LM GENERAL INSURANCE COMPANY (hereinafter, Plaintiff) moves unopposed pursuant to CPLR Section 3215, declaring Defendants, ALIGNMENT CHIROPRACTIC P.C., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BROWN STONE ACUPUNCTURE P.C., DR. RIOTTO CHIROPRACTIC, P.C., LIFE PT, P.C., METROCARE MEDICAL P.C., MICHAEL BANAY PHYSICAL THERAPY P.C., NEW YORK INJURY CHIROPRACTIC REHAB P.C., SHERIDAN RX INC AKA SHERIDAN PHARMACY, SKILLMAN CHEMISTS CORP., SUPPLIES MADE EASY INC., SURGIMED CARE INC, and U.K. SINHA PHYSICIAN P.C., in default in appearing or answering the Summons and Complaint and awarding Plaintiff a default judgment against the aforementioned Defendants based upon their failure to appear and/or serve an Answer in the above-entitled action; and for such other and further relief that this Court deems just, proper and equitable.

The Court notes that after the submission date of the instant motion, a Stipulation of Partial Discontinuance was filed as against Defendant, DR. RIOTTO CHIROPRACTIC, P.C. (NYSCEF Docket Entry No. 55). As such, the instant motion pursuant to CPLR Section 3215 is directed towards the following defaulting Defendants, ALIGNMENT CHIROPRACTIC P.C., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BROWN STONE ACUPUNCTURE P.C., LIFE PT, P.C., METROCARE MEDICAL P.C., MICHAEL BANAY PHYSICAL THERAPY P.C., NEW YORK INJURY CHIROPRACTIC REHAB P.C., SHERIDAN RX INC AKA SHERIDAN PHARMACY, SKILLMAN CHEMISTS CORP., SUPPLIES MADE EASY INC., SURGIMED CARE INC, and U.K. SINHA PHYSICIAN P.C., (hereinafter collectively, Defaulting Defendants).

<sup>10</sup> Defendant, NOVA MEDICAL DIAGNOSTIC P.C. filed an Answer on November 9, 2023 (NYSCEF Docket Entry No. 7).

<sup>11</sup> Defendant, STAR CHIROPRACTIC P.C. filed an Answer on May 17, 2024 (NYSCEF Docket Entry No. 34).

"A plaintiff seeking leave to enter a default judgment under CPLR § 3215 must file proof of: (1) service of a copy or copies of the summons and the complaint, (2) the facts constituting the claim, and (3) the defendant's default" (*see* CPLR 3215[f]; *Fried v. Jacob Holding, Inc.*, 110 A.D.3d 56, 59–60, 970 N.Y.S.2d 260).

Here, Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215 and its entitlement to a default judgment against the Defaulting Defendants.

The law in the State of New York is clear that in order for Declaratory Relief to be proper, "[t]he dispute must be real, definite, substantial, and sufficiently matured so as to be ripe for judicial determination". *See Waterways Dev. Corp. v. Lavallo*, 28 A.D.3d 539, 813 N.Y.S.2d 485 (2d Dept 2006). *See also Spitzer v. Schussel*, 48 A.D.3d 233, 850 N.Y.S.2d 431 (1st Dept 2008). In addition, a plaintiff is not entitled to the relief it seeks simply because defendants defaulted. A "default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that [the party seeking default] establish a right to a declaration". *JBBNY, LLC v. Dedvukaj*, 171 A.D.3d 898 (2d Dept 2019), quoting *Dole Food Co., Inc. v. Lincoln General Ins. Co.*, 66 A.D.3d 1493 (4th Dept 2009). A Court may award a declaratory judgment by default upon plaintiff's showing proof of facts constituting the claims and defendant's failure to appear in the action or oppose the action. (*Hertz Vehicles, LLC v. Best Touch PT, P.C.*, 162 A.D.3d 617 (1<sup>st</sup> Dept 2018)).

In as much as the Defaulting Defendants have failed to answer or otherwise appear in this action, Plaintiff's motion for default judgment is granted as against Defendants ALIGNMENT CHIROPRACTIC P.C., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BROWN STONE ACUPUNCTURE P.C., LIFE PT, P.C., METROCARE MEDICAL P.C., MICHAEL BANAY PHYSICAL THERAPY P.C., NEW YORK INJURY CHIROPRACTIC REHAB P.C., SHERIDAN RX INC AKA SHERIDAN PHARMACY, SKILLMAN CHEMISTS CORP., SUPPLIES MADE EASY INC., SURGIMED CARE INC, and U.K. SINHA PHYSICIAN P.C. only. Plaintiff has also established a right to the declaratory relief sought in the Complaint herein against ALIGNMENT CHIROPRACTIC P.C., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BROWN STONE ACUPUNCTURE P.C., LIFE PT, P.C., METROCARE MEDICAL P.C., MICHAEL BANAY PHYSICAL THERAPY P.C., NEW YORK INJURY CHIROPRACTIC REHAB P.C., SHERIDAN RX INC AKA SHERIDAN PHARMACY, SKILLMAN CHEMISTS CORP., SUPPLIES MADE EASY INC., SURGIMED CARE INC, and U.K. SINHA PHYSICIAN P.C. only.

Accordingly, it is hereby:

**ORDERED**, that the branch of plaintiff's application seeking a default judgment against defendants ALIGNMENT CHIROPRACTIC P.C., APTECHKA RX INC., ATLANTIC MEDICAL & DIAGNOSTIC, P.C., BROWN STONE ACUPUNCTURE P.C., LIFE PT, P.C., METROCARE MEDICAL P.C., MICHAEL BANAY PHYSICAL THERAPY P.C., NEW YORK INJURY CHIROPRACTIC REHAB P.C., SHERIDAN RX INC AKA SHERIDAN PHARMACY, SKILLMAN CHEMISTS CORP., SUPPLIES MADE EASY INC., SURGIMED CARE INC, and U.K. SINHA PHYSICIAN P.C. is granted; and it is further

**ORDERED**, that the plaintiff is under no contractual duty to defend, nor to provide indemnity coverage, nor to provide property damage coverage, nor to provide bodily injury coverage; nor to provide coverage for any claims of No-Fault benefits and/or Uninsured/Underinsured Motorist Coverage made by any of the Defaulting Defendants and/or their assignees for the subject loss; and it is further

**ORDERED** that the subject policy is null and void; and it is further

**ORDERED** that Plaintiff and the remaining Defendants, shall appear for the previously scheduled Status Conference scheduled for March 5, 2025 at 9:30 a.m.; and it is further

**ORDERED** any relief not specifically addressed herein is denied.

Defendants may seek vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015 or CPLR § 317, or any other applicable law.

This constitutes the Decision and Order of this Court.

Dated: February 10, 2025  
Mineola, New York

ENTER:

  
HON. EILEEN C. DALY-SAPRAICONE, J. S. C.

**ENTERED**

**Feb 18 2025**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE