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| <b>State Farm Mut. Auto. Ins. Co. v Jackson</b>                                                                                                                                                                                |
| 2025 NY Slip Op 35560(U)                                                                                                                                                                                                       |
| January 8, 2025                                                                                                                                                                                                                |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 614144/2023                                                                                                                                                                                           |
| Judge: Ellen Tobin                                                                                                                                                                                                             |
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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. Ellen Tobin, A.J.S.C.**

X

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,**

**Plaintiff,**

**- against -**

**CARISMA JACKSON, et al.,**

**Defendants.**

X

**TRIAL/IAS PART 35**

**Index No. 614144/2023**

**Motion Sequence No. 001**

**DECISION AND ORDER**

The following papers were read on this motion:

NYSCEF Doc. Nos.

|                                                                      |          |
|----------------------------------------------------------------------|----------|
| Notice of Motion, Affirmations and Affidavit in Support and Exhibits | 57 -- 84 |
|----------------------------------------------------------------------|----------|

Upon the foregoing papers, plaintiff State Farm Mutual Automobile Insurance Company (“Plaintiff”) moves for an Order pursuant to CPLR § 3215 entering default judgments against non-appearing individual defendant Carisma Jackson (“Jackson”),<sup>1</sup> and non-appearing entity defendants Bronx Diagnostic Radiology, P.C.; Etzem Diagnostics, Inc.; Five Star Pharmacy, Inc.;<sup>2</sup> Gold Coast Medical Care, PLLC; Gordon C. Davis, Medical, P.C.; Herschel Kotkes, M.D., P.C.; Hollis Drugs Inc.; Modern Remedies LLC; Pharmakon Pharmacy, Inc.; R Family Pharmacy Inc.;

<sup>1</sup> Individuals Mitchell Jeffrey and Maurice Moseley were initially named as defendants; however they were never served with the summons and complaint (*see* Laliwala Aff. ¶ 4). Individual defendants Willy Jean Francois and Gregory Deralus interposed an Answer on November 8, 2023 (NYSCEF Doc. No. 36). Pursuant to a Stipulation of Discontinuance dated March 1, 2024, the action was discontinued against as against Francois and Deralus (NYSCEF Doc. No. 91).

<sup>2</sup> By letter dated May 21, 2024, Plaintiff rejected the answer filed by Five Star Pharmacy, Inc. and Hollis Drugs Inc. as untimely (NYSCEF Doc. No. 92). Those defendants did not respond to the letter or attempt to remedy the late answer.

Wellness Rehabilitation PT P.C.; Ridge Mobile Medical PLLC and Sunshine Valley Stream Medical P.C. (collectively, the “Provider Defendants” and, together with Jackson, “Defendants”).<sup>3</sup>

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant Jackson was the driver of a vehicle insured by Plaintiff, which was involved in an alleged automobile accident on October 6, 2022 (the “Accident”). Mitchell Jeffrey (“Jeffrey”) and Maurice Moseley (“Moseley”) were passengers in the vehicle at the time of the Accident. Jackson, Jeffrey and Moseley (collectively, the “Individuals”) reportedly sustained injuries in the Accident, for which they sought treatment under the personal injury protection or “No Fault” coverage of the insurance policy issued by Plaintiff for the vehicle (the “Policy”). The Provider Defendants are healthcare providers that allegedly provided medical and other treatments and services to the Individuals in connection with the injuries they allegedly sustained from the Accident. Prior to receiving such services, the Individuals provided the Provider Defendants with Assignments of Benefits, transferring their rights of repayment of No-Fault benefits under the Policy to the Provider Defendants. After rendering services to the Individuals, the Provider Defendants submitted to Plaintiff their bills for services allegedly rendered along with the Assignment of Benefits forms, seeking reimbursement under the Policy and applicable law (the “Claims”).

Following the accident, Plaintiff initiated an investigation of the Claims and the related facts and circumstances. As part of the investigation, Plaintiff scheduled Examinations Under Oath (“EUOs”) for each of the Individuals. Plaintiff’s submissions in support of the within motion

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<sup>3</sup> Between September and November 2023, defendants Jdu Medical Supplies, Inc.; Borukhov Radiology PLLC; Cross County Chiropractic P.C.; Sea Breeze Physical Therapy P.C.; PG Psychological Services P.C. and Medical Supply of NY Corp. interposed Answers (NYSCEF Doc. Nos. 5, 31, 32, 34). Pursuant to a Stipulation of Discontinuance dated December 11, 2023, the action was discontinued as against First Supply Inc. and Recovery Med, Inc. (NYSCEF Doc. No. 39).

detail the correspondence sent to each of the Individuals providing notice of the EUO dates and attaching copies of the same. Moseley's EUO took place on December 20, 2022. Jackson's EUO took place on January 17, 2023. Plaintiff sent notices to Jeffrey scheduling his EUO for December 19, and January 17, 2023. Jefferey failed to appear for the EUO on both dates.

Plaintiff contends that based on its investigation and the EUOs of Jackson and Mosely, it concluded the Accident was not covered by the Policy because it was the product of a staged and/or intentional event, which was perpetrated solely for the purpose of falsely obtaining No Fault benefits under the Policy. Plaintiff further contends that Jefferey's failure to appear for the EUO was a breach of a condition precedent to coverage under the Policy. As a result, Plaintiff contends it was entitled to deny the Provider Defendants' Claims for No-Fault reimbursements.

Plaintiff commenced this action in March 2023 by filing a summons and complaint. In the complaint Plaintiff asserts 7 causes of action pursuant to CPLR § 3001, seeking judgments declaring -- in sum -- that the Accident was not covered by the Policy, Plaintiff is not obligated to pay the Claims submitted by the Provider Defendants and Plaintiff is not obligated to provide a defense and/or indemnification to Jackson (the insured).

In September 2023, Defendants were served with the summons and complaint pursuant to BCL § 306, CPLR § 308 [1] and/or Limited Liability Company Law § 303 (NYSCEF Doc. Nos. 7-32 and Ex. "2" to Laliwala Aff.). Plaintiff also sent the required additional notices under CPLR § 3215 [g] [4] [i], by mailing copies of the summons by first class mail to the Provider Defendants' on October 18, 2023 (Ex. "3" to Laliwala Aff.). Defendants were also served with copies of the within motion for default motion via first class mail on April 2, 2024 (NYSCEF Doc. No. 87).

Jackson and the Provider Defendants failed to answer or move with respect to the complaint or otherwise appear in the case. Jackson and the Provider Defendants also did not respond to the default motion, which is unopposed.

### DISCUSSION AND ANALYSIS

CPLR § 3215 [a] permits a plaintiff to seek default when a defendant fails to appear. A plaintiff seeking a default judgment under CPLR § 3215 must present *prima facie* proof of a cause of action, and while a defaulting defendant 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 AD3d 624, 624 [2d Dept 2010]; *Green v Dolphy Constr. Co.*, 187 AD2d 635, 636 [2d Dept 1992]; *Silberstein v Presbyterian Hospital in the City of New York*, 96 AD2d 1096, 1096 [2d Dept 1983]).

On a motion for leave to enter a default judgment pursuant to CPLR § 3215, the movant is required to submit (1) proof of service of the summons and complaint; (2) proof of the facts constituting the movant's claim; and (3) proof of the defaulting party's default in answering or appearing (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011], citing CPLR § 3215 [f]). 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]). Upon an "application for judgment by default, proof of the facts constituting the claim, the default, and amount due are to be set forth in an affidavit made by the party" (*HSBC Bank USA, N.A. v Betts*, 67 AD3d 735, 736 [2d Dept 2009], quoting CPLR § 3215 [f]). Alternatively, a verified complaint "may be used as the affidavit of facts constituting the claim and the amount

due; in such case, an affidavit as to the default shall be made by the party or the party's attorney" (CPLR § 3215 [f]).

In support of this motion for default judgments, Plaintiff submits (1) an affirmation from Christine Laliwala, Esq., an attorney with the law firm representing Plaintiff in this matter; (2) an affirmation from Richard C. Aitken, Esq., another attorney with the law firm representing Plaintiff in this matter; and (3) an affidavit from Lisa Chaparos, who is employed by Plaintiff as a Claim Specialist.

In her affidavit, Ms. Chaparos attests to her knowledge of Plaintiff's business practices and procedures for No Fault claims in New York, including the intake process, the handling of the claims and creation of documents associated with claim decisions, including denials, explains of review, verification requests and payments. Ms. Chaparos attests that Plaintiff initiated the investigation to verify, among other things, the facts surrounding the alleged loss, the injuries reportedly sustained by the Individuals, the medical treatment allegedly rendered by the Provider Defendants and to verify the garaging address of the insured vehicle. Ms. Chaparos attests that the because the Accident occurred only 20 days after the Policy was procured, it was considered a loss on new business. Ms. Chaparos further attests that Plaintiff's investigation, including the EUOs of Jackson and Moseley, revealed, among other things, that the subject vehicle was not titled in Jackson's name; the police report stated that the vehicle was registered to Jackson at a Brooklyn address, however the vehicle had New Jersey license plates; Jackson had never lived in New Jersey and had asked her mother to register the vehicle there because Jackson did not have the documents needed to register the vehicle in New York; Jackson could not explain why she had both New York and New Jersey license plates; Jackson and Mosely gave conflicting testimony about where they were traveling to/from at the time of the Accident, the other locations they had visited that day and

when and how they left the scene of the Accident; and Jackson testified that Moseley and Jefferey did not complain of injuries at the scene, which is consistent with the police report but contrary to their subsequent receipt of extensive medical treatments. Ms. Chaparos further attests that based on the totality of Plaintiff's investigation, including the discrepant EUO testimony and Jeffrey's failure to appear for the EUO, Plaintiff was justified in its conclusion that the Accident was a staged and/or intentional act and Plaintiff had properly denied coverage.

In his affirmation, Mr. Aitken describes his knowledge of Plaintiff's counsel's practices and procedures, including scheduling EUOs and mailing EUO notices. Mr. Aitken details Plaintiff's efforts to schedule Jeffrey's EUO, and attests that multiple letters were timely sent to Jeffrey and his counsel for the purpose of scheduling the EUO. Copies of these documents are annexed as Exhibits "16" and "18" to the motion papers. Mr. Aitken further attests that Jeffrey failed to appear for the EUO on two occasions (*see* Exs. "17" and "19" to the motion papers).

In her affirmation, Ms. Laliwala attests that upon Plaintiff's completion of its investigation, all Defendants were placed on notice of Plaintiff's decision to deny all Claims arising out the Accident, and copies of Plaintiff's NF-10 Denial of Claim Forms are annexed as Exhibit "24" to the motion papers.

Plaintiff's submissions contain the proof required by the first and third prongs of CPLR § 3215 [f]: as discussed above, Defendants were served with the summons and complaint and the Provider Defendants were served with the required additional notices. Defendants did not appear in the case, file timely answers or move with respect to the complaint. Defendants were also served with notices of the default motion and did not respond.

Plaintiff also satisfies the second prong of CPLR § 3215 (f). By failing to answer or otherwise respond to the complaint, Defendants are deemed to have admitted the factual

allegations in the complaint (*see State Farm Fire & Cas. Co. v. AA Acupuncture Serv., P.C.*, 217 AD3d 643, 643 [2d Dept 2023]). The record – including the Claim Specialist’s affidavit and the EUO testimony of two of the three claimants – sets forth the factual basis for Plaintiff’s conclusion that the Accident was not a covered event. Plaintiff’s submissions contain proof of the facts constituting Plaintiff’s claims for judgments declaring noncoverage and that Plaintiff is not obligated to indemnify or defend Jackson or otherwise defend or pay the Claims (*see State Farm Fire & Cas. Co. v. AA Acupuncture Serv., P.C.*, 217 AD3d at 643; *State Farm Mut. Auto. Ins. Co. v. Surgicore of Jersey City*, 195 AD3d 454, 455 [1d Dept 2021]). Plaintiff’s submissions are also sufficient to show Plaintiff is not obligated to defend or pay claims provided to Jeffrey because of Jeffrey’s failure to appear for the EUO (*see State Farm Fire & Cas. Co. v. AA Acupuncture Serv., P.C.*, 217 AD3d at 643; *American States Ins. Co. v. Huff*, 119 AD3d 478, 479 [1d Dept 2014]; 11 NYCRR § 65-3.5 [e]; 11 NYCRR § 65-1.1 [d]).

Based on the foregoing, it is hereby:

**ORDERED**, that Plaintiff’s motion for default judgments as against non-appearing defendants Carisma Jackson; Bronx Diagnostic Radiology, P.C.; Etzem Diagnostics, Inc.; Five Star Pharmacy, Inc.; Gold Coast Medical Care, PLLC; Gordon C. Davis; Medical, P.C.; Herschel Kotkes, M.D., P.C.; Hollis Drugs Inc.; Modern Remedies LLC; Pharmakon Pharmacy, Inc.; R Family Pharmacy Inc.; Wellness Rehabilitation PT P.C.; Ridge Mobile Medical PLLC and Sunshine Valley Stream Medical P.C. is **GRANTED**; and it is further

**ORDERED**, that Plaintiff shall submit proposed Judgment on notice to Defendants; and it is further

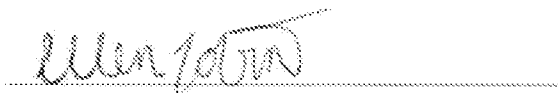
**ORDERED**, that Plaintiff shall serve a copy of this Decision and Order with notice of entry on Defendants by certified mail and regular mail within ten (10) days of the date of entry of this Decision and Order and shall file proof of such service on NYSCEF.

Any other relief sought herein and not addressed or ruled on is **DENIED**.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York  
January 8, 2025

**ENTER:**

A handwritten signature in cursive script, appearing to read "Ellen Tobin", is written over a horizontal dotted line.

**HON. ELLEN TOBIN, A.J.S.C.**

**ENTERED**

**Jan 16 2025**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE