

Liberty Mut. Ins. Co. v Chubinidze

2017 NY Slip Op 32179(U)

October 12, 2017

Supreme Court, New York County

Docket Number: 653799/2016

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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LIBERTY MUTUAL INSURANCE COMPANY
LM GENERAL INSURANCE COMPANY,

Plaintiffs,
- v -

Index No.
653799/2016
**DECISION
and ORDER**
Mot. Seq. 001

KOTE CHUBINIDZE
"Individual Defendant,"

GOTTO MEDICAL CARE, P.C.,
JAMAICA WELLNESS MEDICAL, P.C.,
LIDAS MEDICAL SUPPLY, INC.,
LVOV ACUPUNCUTRE, P.C.,
LUTHERAN MEDICAL CENTER,
MEDICAL RECORD RETRIEVAL, INC.
METROPOLITAN MEDICAL & SURGICAL, P.C.,
NES MEDICAL SERVICES OF NEW YORK, P.C.,
NY COMMUNITY HOSPITAL OF BROOKLYN,
OMEGA DIAGNOSTIC IMAGING, P.C.,
QUANTUM MEDICAL RADIOLOGY OF CALIFORNIA,
UNITED NYC MEDICAL ASSOCIATES, LLC.,
UNITED WELLNESS CHIROPRACTIC, P.C,
VICTOR KATZ,

"Medical Provider Defendants,"
Collectively, the Defendants.

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HON. MELISSA A. CRANE, J.S.C.

This case arises from an automobile accident that occurred on June 26, 2015. involving defendant Kote Chubinidze ("claimant"). Chubinidze alleges that he sustained serious bodily injuries as a result of the collision, and submitted claims to plaintiffs for no-fault benefits under the insurance policy that plaintiffs, Liberty Mutual Insurance Company and LM General Insurance Company ("Liberty Mutual" and "LM General"), issued to Alexander and Viktoriya Royzen (policy number AOS-228-528205-40). According to a police report, a car struck Chubinidze, a pedestrian, and then that car left the scene of the accident. At the time,

Chubinidze could not identify the vehicle that struck him. Later, Chubinidze submitted a letter to plaintiffs claiming that a vehicle insured under the above policy hit him. Chubinidze then assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiffs commenced an action on or about June 19, 2016, by a Summons and Complaint, seeking a declaratory judgment against claimants as well as numerous co-defendants/medical providers.

Plaintiffs have discontinued this action against defendants Omega Diagnostic Imaging, P.C., Quantum Medical Radiology of California, and United NYC Medical Associates, LLC (*see* plaintiffs' motion for default judgment, stipulations of discontinuance attached as Exhibit "E").

Plaintiffs Liberty Mutual and LM General now move for a default judgment pursuant to CPLR 3215 against the following non-answering defendants: Kote Chubinidze, Gotto Medical Care, P.C., Jamaica Wellness Medical, P.C., LVOV Acupuncture, P.C., Lutheran Medical Center, Medical Record Retrieval, Inc., Metropolitan Medical & Surgical, P.C., NES Medical Services of New York, P.C., NYH Brooklyn Chob, NY Community Hospital of Brooklyn, United Wellness Chiropractic, P.C., and Victor Katz (the "non-answering defendants"), for their failure to answer the summons and complaint. The court grants plaintiffs' motion against the non-answering defendants only. Plaintiffs have submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of defendant's failure to answer or appear (*see* CPLR 3215; *see also, Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]).

Plaintiffs argue that, based on Examination Under Oath testimony from Chubinidze and the insured, in addition to Liberty Mutual's own special unit investigation into the circumstances surrounding the accident, defendant Chubindize made material and fraudulent misrepresentations that a vehicle insured by Liberty Mutual struck him. Plaintiffs submit, *inter*

alia: (1) an affidavit from Charlotte Watters, team manager for Liberty Mutual's special investigations unit, who investigated no-fault claims in this case that indicated material misrepresentation; and (2) an affidavit from Sean Surdich, Liberty Mutual claims department team manager for the special investigations unit New York liaison team, who attests to the timely and proper mailing of verification requests, and Liberty Mutual's policy and procedures for the generation, issuance, and mailing denials of no-fault claims.

Finally, as to defendant Lidas Medical Supply, Inc. ("Lidas"), on April 24, 2017, Lidas made a motion to vacate default judgment and grant leave to serve a late answer (*see* mot seq 002, NYSCEF e-doc #21). On July 6, 2017, Liberty Mutual and LM General entered into a stipulation with defendant Lidas where, *inter alia*, Lidas withdrew its motion to vacate default judgment and, if Lidas filed an answer by July 28, 2017, plaintiffs would accept the answer as timely (*see* NYSCEF e-doc #28). Defendant Lidas submitted an answer on July 18, 2007 (*see* NYSCEF e-doc #29). Therefore, the court denies plaintiffs' motion for default judgment against defendant Lidas Medical Supply, Inc., only, as moot.

Wherefore, it is hereby,

ORDERED that plaintiffs Liberty Mutual Insurance Company and LM General Insurance Company's motion for default judgment against defendants Kote Chubinidze, Gotto Medical Care, P.C., Jamaica Wellness Medical, P.C., LVOV Acupuncture, P.C., Lutheran Medical Center, Medical Record Retrieval, Inc., Metropolitan Medical & Surgical, P.C., NES Medical Services of New York, P.C., NYH Brooklyn Chob, NY Community Hospital of Brooklyn, United Wellness Chiropractic, P.C., and Victor Katz (the "non-answering defendants") is granted without opposition; and it is further

ORDERED that plaintiffs Liberty Mutual Insurance Company and LM General Insurance

Company's motion for default judgment against defendant Lidas Medical Supply, Inc. is denied as moot; and it is further

ADJUDGED AND DECLARED that defendants Kote Chubinidze, Gotto Medical Care, P.C., Jamaica Wellness Medical, P.C., LVOV Acupuncture, P.C., Lutheran Medical Center, Medical Record Retrieval, Inc., Metropolitan Medical & Surgical, P.C., NES Medical Services of New York, P.C., NYH Brooklyn Chob, NY Community Hospital of Brooklyn, United Wellness Chiropractic, P.C., and Victor Katz (the "non-answering defendants"), are not entitled to no-fault coverage for the motor vehicle accident that occurred on June 26, 2015, involving individual defendant Kote Chubinidze, for claims submitted under policy number AOS-228-528205-40, as referenced in the complaint.

DATED: 10/12/, 2017
New York, New York

E N T E R:



MELISSA A. CRANE, J.S.C