

American Tr. Ins. Co. v Mowla
2019 NY Slip Op 33309(U)
November 6, 2019
Supreme Court, New York County
Docket Number: 652593/2019
Judge: Arthur F. Engoron
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

INDEX NO. 652593/2019

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 09/16/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

SHAHERA K. MOWLA, AOT CHIROPRACTIC PC, BLISS DRUGS, CLASSIC MEDICAL DIAG REHAB PC, COLUMBUS IMAGING CENTER LLC, EZ TRIBORO SERVICES INC, HIDDEN DRAGON ACUPUNCTURE PC, METRO PAIN SPECIALISTS PC, MYRTLE AVENUE TRADING LLC, PI PHYSICAL THERAPY PC, REBOUND ACUPUNCTURE PC, RIGHT AID MEDICAL SUPPLY CORP., VITRUVIAN REHAB PT PC, WELLMART RX INC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is hereby ordered that plaintiff's motion for a declaratory judgment on default is granted as against Shahera K. Mowla, AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C., only.

On May 1, 2019, plaintiff, American Transit Insurance Company, commenced this action against Shahera K. Mowla (the "claimant-defendant"), AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists P.C., Myrtle Avenue Trading LLC, PI Physical Therapy PC., Rebound Acupuncture P.C., Right Aid Medical Supply Corp., Vitruvian Rehab P.T. P.C, and Wellmart Rx Inc. (the "medical provider defendants"), for a judgment, declaring that there is no no-fault coverage for benefits claimed arising out of a November 1, 2017 motor vehicle accident.

Background

Plaintiff issued an insurance policy (identified as "CAP 611577") to LIC Leasing Inc., which included a no-fault endorsement, providing coverage up to the minimum statutory amount of \$50,000.00 to any eligible injured person for all necessary medical defenses, lost wages, and other expenses arising out of a motor vehicle accident.

On November 1, 2017, the claimant-defendant was allegedly injured in a motor vehicle accident. The claimant-defendant notified plaintiff of the alleged accident and claimed injuries arising out of the subject accident. Plaintiff assigned claim number 1011825-04 to this claim. The claimant-defendant sought medical treatment from the medical provider defendants for injuries allegedly sustained in the subject accident. The claimant-defendant assigned the right to collect no-fault benefits to the medical provider defendants in exchange for the medical treatment allegedly received. The medical provider defendants submitted no-fault claims to plaintiff to recover for medical services allegedly provided to the claimant-defendant. Additionally, the medical provider defendants have (or have the right to have) commenced court actions and/or arbitration proceedings. The claimant-defendant notified plaintiff of the claimant-defendant's address.

Plaintiff exercised its right to conduct an independent medical examination ("IME") of the claimant-defendant and hired a third-party vendor, National Claim Evaluations, Inc., to schedule an IME. The claimant-defendant failed to appear for an IME, both on the initially scheduled date of February 5, 2018 and on the rescheduled date of March 5, 2018. Consequently, plaintiff denied all claims received after the latter scheduled IME date.

Between May 16 and 22, 2019, plaintiff served defendants with the Summons and Complaint and with CPLR 3215(g) notices.

In a June 13, 2019 Stipulation, plaintiff and the medical provider defendant Rebound Acupuncture, P.C. (the "releasing defendant") agreed that (1) releasing defendant would discontinue all lawsuits filed against plaintiff for medical services allegedly provided to the claimant-defendant arising out of the November 1, 2017 motor vehicle accident, (2) releasing defendant would withdraw arbitration matters and pending claims filed against plaintiff for medical services allegedly provided to the claimant-defendant arising out of the subject accident, (3) releasing defendant would not submit any future claims to plaintiff for medical services arising out of the subject accident, (4) the subject action would be discontinued with prejudice, as against the releasing defendant only, and (5) all of releasing defendant's counter-claims would be discontinued.

On June 27, 2019, the medical provider defendant, Wellmart Rx, Inc., by and through The Sigalov Firm PLLC, answered with various denials and forty affirmative defenses.

In a July 9, 2019 Stipulation, plaintiff and the medical provider defendant PI Physical Therapy, P.C. (the "releasing defendant") agreed: (1) releasing defendant would discontinue all lawsuits filed against plaintiff for medical services allegedly provided to the claimant-defendant arising out of the November 1, 2017 motor vehicle accident, (2) releasing defendant would withdraw arbitration matters and pending filed against plaintiff for medical services allegedly provided to the claimant-defendant arising out of the subject accident, (3) releasing defendant would not submit any future claims to plaintiff for medical services arising out of the subject accident, (4) the subject action would be discontinued with prejudice, as against the releasing defendant only, and (5) all of releasing defendant's counter-claims would be discontinued.

On August 20, 2019, pursuant to CPLR 3215(a), plaintiff moved for a default judgment as against the non-answering defendants, namely, the claimant-defendant, AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C.

Pursuant to CPLR 3001 and 3215(f), plaintiff has established that it is entitled to a declaratory judgment on default as against the non-answering defendants by submitting the following: the November 1, 2017 Police Accident Report; the November 15, 2017 NF-2 Application for No-Fault Benefits; the letters scheduling an IME for February 5, 2018 and March 5, 2018; the April 3, 2018 affidavit of Ronni McLaughlin, a National Claim Evaluations employee; the April 4, 2018 and September 18, 2018 affidavits of Dr. Todd Aordkian; the April 6, 2018 Denial of Claim Form; the May 31, 2019 Affidavit of Merit of Cheryl Glaze, a No-Fault Claims Manager with plaintiff; and the August 20, 2019 Affirmation in Support of William Larkin, Esq., with Larkin Farrell, LLC, attorneys for plaintiff.

On August 22, 2019, plaintiff served the Notice of Motion, Affirmation in Support, and Exhibits upon Shahera K. Mowla, AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C.

Discussion

To date, the claimant-defendant, Shahera K. Mowla, and the medical provider defendants AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C., have failed to appear, answer or otherwise respond to plaintiff's Complaint, and their time to do so has expired. Rebound Acupuncture, P.C. and PI Physical Therapy, P.C. have been discontinued from the action. Only Wellmart Rx Inc. has answered plaintiff's Complaint.

Conclusion

Thus, for the reasons stated herein, plaintiff's motion for a declaratory judgment on default is granted as against Shahera K. Mowla, AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C., only. The Clerk is hereby directed to enter judgment, declaring that defendants Shahera K. Mowla, AOT Chiropractic PC, Bliss Drugs, Classic Medical Diag Rehab PC, Columbus Imaging Center, LLC, EZ Triboro Services Inc., Hidden Dragon Acupuncture PC, Metro Pain Specialists, P.C., Myrtle Avenue Trading LLC, Right Aid Medical Supply Corp., and Vitruvian Rehab P.T. P.C. are not entitled to no-fault benefits under the subject insurance policy for the November 1, 2017 motor vehicle accident.

Plaintiff, American Transit Insurance Company, and the answering medical provider defendant, Wellmart Rx Inc., are hereby directed to appear for a preliminary conference on Tuesday,

December 3, 2019 at 10:00 AM, 60 Centre Street, Room 418, New York, NY. The Clerk is hereby directed to enter judgment accordingly.



11/6/2019

DATE

ARTHUR F. ENGORON, J.S.C.

HON. ARTHUR F. ENGORON

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