

American Tr. Ins. Co. v Haselkorn
2020 NY Slip Op 31823(U)
June 8, 2020
Supreme Court, New York County
Docket Number: 158230/2019
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

INDEX NO. 158230/2019

MOTION DATE 3/30/2020

MOTION SEQ. NO. 001

- v -

ALEX HASELKORN, MD., P.C., ALL BEST TRADING,
INC., ISOKINETIC PHYSICAL THERAPY PLLC, JAM
PHARMACY CORP, LONGEVITY MEDICAL SUPPLY,
INC., MEDAID RADIOLOGY, LLC, METRO PAIN
SPECIALISTS P.C., NILE REHAB PHYSICAL THERAPY,
P.C., QI LONGFELLOW ACUPUNCTURE
P.C., SCARBOROUGH CHIROPRACTIC P.C.

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 16, 17, 18

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

In his declaratory judgment action, the plaintiff insurer moves pursuant to CPLR 3215 for leave to enter a default judgment against non-answering defendants Alex Haselkorn MD., P.C., ALL Best Trading Inc., Isokinetic Physical Therapy PLLC, Jam Pharmacy Corp., Medicaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Qi Longfellow Acupuncture P.C., and Scarborough Chiropractic P.C., declaring that they are not entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on September 7, 2018, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defendants as assignees of nonparty Dewilka Novel, alleged to have been injured in the accident, and made claims under a policy issued by the plaintiff under policy number CAP614910, claim number 1039108-04. No opposition is submitted.

The plaintiff's motion is granted inasmuch as it has provided proof of service of the summons and complaint upon the defendants, proof of the facts constituting the claim, and proof of the defendants' defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1st Dept. 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1st Dept. 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g). Having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

As to the facts constituting its claim, the plaintiff submitted proof to demonstrate, *prima facie*, that it properly denied coverage on the subject claims on the basis that it has a "founded belief" that the injuries for which Novel sought treatment did not arise from an insured event. See Central General Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997); Zappone v Home Ins. Co., 55 NY2d 131 (1982); Mount Sinai Hosp. v Triboro Council, 263 AD2d 11 (2nd Dept. 1999). This determination was made after an investigation by the plaintiff, outlined in the complaint, verified by Uriel McLeish, a Claims Specialist for the plaintiff, and in the affidavit of Timothy McNellis, a Special Investigations Unit (SIU) Investigator for the plaintiff, which investigation included the Examination Under Oath of Dewilka Novel, conducted by McNellis on March 25, 2019. McNellis states that the manner in which the accident, a two-car collision, is alleged to have occurred presented "red flags for a staged loss" and that Novel materially misrepresented facts and circumstances of the accident and injuries could not recall many of the details of the accident, such as the day, time or location she entered the vehicle and where she sat inside the vehicle, or the severity of the impact of the collision. The vehicle was a car service taxi but Novel did not know who called for the service, or the last names of the other passengers, who she described as friends. She also testified that she was not involved in any prior accident but an ISO search showed a 2002 accident for which she made a bodily injury

claim against another insurer. The plaintiff also submits a police report which reflects minor or no damage to the involved vehicles. In her affidavit, Cheryl Glaze, a No-Fault Claims Supervisor for the plaintiff, states that a denial of benefits was timely sent to each defendant based on the plaintiff's determination that the accident was staged and thus not an insured event. Therefore, the plaintiff is entitled to a judgment declaring that the defaulting defendants are not entitled to no-fault benefits for the subject accident and claim.

As in this case, CPLR 3215(a) requires that when a default judgment is taken against fewer than all the defendants, the action is severed as against the remaining defendants. See Woodson v Mendon Leasing Corp., 259 AD2d 304 (1st Dept. 1999); see also Balanta v Stanline Taxi Corp., 307 AD2d 1017 (2nd Dept. 2003); Holt v Holt, 262 AD2d 530 (2nd Dept. 1999); Frolish v. Ryder Truck Rental, 63 AD2d 799 (3rd Dept. 1978). A judgment obtained by a plaintiff as against a defaulting defendant does not entitle the plaintiff to collateral estoppel against the non-defaulting defendants who would otherwise be denied a full and fair opportunity to litigate issues of liability. See Woodson v Mendon Leasing Corp., supra; Frolish v Ryder Truck Rental, supra.

Accordingly, it is,

ORDERED that the plaintiff's motion for leave to enter a default judgment pursuant to CPLR 3215 is granted, without opposition, and it is further,

ADJUDGED and DECLARED that defendants Alex Haselkorn MD., P.C., All Best Trading Inc., Isokinetic Physical Therapy PLLC, Jam Pharmacy Corp., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Qi Longfellow Acupuncture P.C., and Scarborough Chiropractic P.C., are not entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on September 7, 2018, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defaulting defendants

as purported assignees of non-party Dewilka Novel under policy issued by the plaintiff under policy number CAP614910, claim number 1039108-04, and it is further,

ORDERED that the action is severed and continued as against the remaining defendants, Longevity Medical Supply, Inc. and Metro Pain Specialists, P.C., and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order; and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

6/8/2020
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER