

Progressive Cas. Ins. Co. v Tavaréz
2020 NY Slip Op 31953(U)
June 17, 2020
Supreme Court, New York County
Docket Number: 651900/2019
Judge: Nancy M. Bannón
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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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STATE FARM MUTUAL AUTOMOBILE INS. CO., STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiffs,

INDEX NO. 651900/2019

MOTION DATE 06/01/2020

MOTION SEQ. NO. 001

- v -

EDWARD HUMBERTO TAVAREZ, DAVID GALAN BATISTA, ANATACHY RODRIGUEZ, ARNEL REYES, BALANCE FIT CHIROPRACTIC P.C., BRONX IMAGING NYC, COHEN & KRAMER, M.D., P.C., DNA PHARMACY INC., INWOOD ACUPUNCTURE, INWOOD MEDICAL CARE, PLLC, JP CHIROPRACTIC, P.C., QBS SOLUTIONS, ROXBURY ANESTHESIA, LLC, SABAS NY SERVICES, CO., SHASHEK CHIROPRACTIC, P.C., SIMPLE THERAPY, PT, P.C., SURGICORE OF JERSEY CITY, LLC, TREMONT DIAGNOSTIC IMAGING, TRINITY PAIN MANAGEMENT OF SI, PLLC, WELL START MEDICAL, P.C., WESTCHESTER RADIOLOGY & IMAGING, WOOD ACUPUNCTURE, P.C.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DEFAULT

In his declaratory judgment action, the plaintiff insurer moves pursuant to CPLR 3215 for leave to enter a default judgment against non-answering defendants Edward Humberto Tavarez, David Galan Batista, Anatachy Rodriguez, Arnel Reyes, Cohen & Kramer, M.D., P.C., DNA Pharmacy, Inc., JP Chiropractic, P.C., Roxbury Anesthesia, LLC, Sabas NY Services Co., Simple Therapy, PT, P.C., Surgicore of Jersey City, LLC, Well Start Medical, P.C. and Wood Acupuncture, 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 March 12, 2018, and the plaintiff is not obligated to honor or pay any claims for

reimbursement submitted by the individual defendants, who claim to have been injured in the accident, or the healthcare defendants, as assignees of the individual defendants, under a policy issued by the plaintiff under policy number 217-9642-C08-32, and assigned claim number 32-3352-H63. 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 the individual defendants 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, and supported by the transcripts of the Examinations Under Oath of Edward Humberto Tavaréz, David Galan Batista, Anatachy Rodriguez and Arnel Reyes. 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 claims.

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 defendant, QBS Solutions, 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.

Pursuant to a stipulation of the parties dated October 1, 2019, the action was discontinued as against defendants Balance Fit Chiropractic, P.C., Inwood Acupuncture, Inwood Medical Care, PLLC, Trinity Pain Management of SI, PLLC and Westchester Radiology & Imaging.

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 Edward Humberto Tavarez, David Galan Batista, Anatachy Rodriguez, Arnel Reyes, Cohen & Kramer, M.D., P.C., DNA Pharmacy, Inc., JP Chiropractic, P.C., Roxbury Anesthesia, LLC, Sabas NY Services Co., Simple Therapy, PT, P.C., Surgicore of Jersey City, LLC, Well Start Medical, P.C. and Wood Acupuncture, 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 March 12, 2018, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defaulting defendants under policy issued by the plaintiff under policy number 217-9642-C08-32, claim number 32-3352-H63, and it is further,

ORDERED that the action is discontinued and the complaint is dismissed, with prejudice, as against defendants Balance Fit Chiropractic, P.C., Inwood Acupuncture, Inwood Medical Care, PLLC, Trinity Pain Management of SI, PLLC and Westchester Radiology & Imaging, pursuant to the parties' stipulation dated October 1, 2019, and it is further

ORDERED that the action is severed and continued as against the non-defaulting defendant, QBS Solutions, 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.

6/17/2020
DATE


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

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: