

American Tr. Ins. Co. v ABA Chiropractic P.C.

2020 NY Slip Op 32382(U)

July 20, 2020

Supreme Court, New York County

Docket Number: 158328/2019

Judge: Arthur F. Engoron

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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

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

ABA CHIROPRACTIC P.C., ADVANCED MEDICAL
CONCEPTS P.C., ALEXIOS APAZIDIS, ALEXIOS
APAZIDIS, M.D. P.C., ALL CITY FAMILY HEALTHCARE
CENTER, INC., BODYBLOOM SERVICES INC,
COMMUNITY MEDICAL IMAGING P.C., COMMUNITY
MEDICAL IMAGING P.C., CPM MED SUPPLY INC, DNA
PHARMACY INC, ELMONT REHAB PT, P.C., EXCELL
CLINICAL LAB INC, FPA HOSPITAL BASED NON PAR MT,
GAOGUI LEASING CORP, ISURPLY LLC, THE MOUNT
SINAI HOSPITAL QUEENS, THE MOUNT SINAI HOSPITAL
SCHOOL OF MEDICINE, SEDATION VACATION
PERIOPERATIVE MEDICINE PLLC, UGP ACUPUNCTURE
P.C., VIP PHARMACY CORP,

Defendants.

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**DECISION + ORDER ON
MOTION**

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, 19

were read on this motion for JUDGMENT - DECLARATORY.

Upon the foregoing documents, plaintiff's motion for a declaratory judgment on default is granted in part and denied in part for the reasons stated hereinbelow.

Background

On November 14, 2018, the non-party claimant, Robin Collado Nunez, was allegedly injured in a motor vehicle accident. The non-party claimant subsequently sought treatment for injuries allegedly arising out of the subject accident from the following medical provider defendants: ABA Chiropractic P.C.; Advanced Medical Concepts P.C.; Alexios Apazidis MD; Alexios Apazidis, M.D. P.C.; All City Family Healthcare Center, Inc.; Bodybloom Services Inc.; Community Medical Imaging P.C.; CPM Med Supply Inc.; DNA Pharmacy Inc.; Elmont Rehab P.T. P.C.; Excell Clinical Lab Inc.; FPA Hospital Based Non Par MT; Gaogui Leasing Corp.; ISurply LLC; The Mount Sinai Hospital Queens; The Mount Sinai Hospital School of Medicine d/b/a MSMC Emergency; Sedation Vacation Perioperative Medicine PLLC; UGP Acupuncture P.C.; and VIP Pharmacy Group. The non-party claimant assigned to the medical provider defendants the right to collect no-fault insurance benefits under an insurance policy that plaintiff, American Transit Insurance Company, had issued that covered the vehicle in which the non-party claimant was a passenger at the time of the subject accident. The medical provider

defendants, in their respective capacities as the non-party claimant's assignees under the subject insurance policy, then submitted claims to plaintiff (NYSCEF Doc. 1, at 13).

Plaintiff asserts that the subject insurance policy does not cover the subject accident and that the non-party claimant's injuries did not arise out of the subject accident (NYSCEF Doc. 1, at 10). Plaintiff claims that the subject accident "raises many red flags for a staged loss," as the passengers provided inconsistent testimonies at their Examinations Under Oath ("EUOs") (NYSCEF Doc. 1, at 11). According to the complaint, the records that the hospital submitted to plaintiff differ from the non-party claimant's allegations of his injuries (NYSCEF Doc. 1, at 11). For example, according to the instant petition, Dr. Alan Zimmerman found no evidence of recent traumatic changes to the non-party claimant's left knee but instead found "a chronic deformity of the proximal tibia and fibula and no acute fracture," despite the non-party claimant's undergoing surgery to that knee following the subject accident (NYSCEF Doc. 1, at 12).

On August 14, 2019, plaintiff commenced the instant action against the medical provider defendants, alleging three bases of fraud: (1) the non-party claimant's alleged injuries and the no-fault treatment that the medical provider defendants provided did not arise out of the subject accident; (2) the non-party claimant violated the subject no-fault regulations by materially misrepresenting the facts and circumstances of the subject accident; and (3) the subject accident was actually comprised of "deliberate, staged, and intentional acts" by the non-party claimant (NYSCEF Doc. 1). Plaintiff seeks a judgment declaring that (1) the non-party claimant breached a policy condition of the subject insurance policy; and, therefore, (2) none of the defendants are not entitled to no-fault coverage, first party coverage, and/or first party no-fault benefits, arising out of the subject accident (NYSCEF Doc. 1).

On February 6, 2020, medical provider defendant Bodybloom Services, Inc. answered the complaint with various admissions, denials, and forty Affirmative Defenses, requesting that this Court dismiss the complaint and award it costs and disbursement (NYSCEF Doc. 3).

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment as against the medical provider defendants ABA Chiropractic P.C.; Advanced Medical Concepts P.C.; Alexios Apazidis MD; Alexios Apazidis, M.D. P.C.; All City Family Healthcare Center, Inc; Bodybloom Services Inc.; Community Medical Imaging P.C.; CPM Med Supply Inc.; Elmont Rehab P.T. P.C.; Excell Clinical Lab Inc.; Gaogui Leasing Corp.; Surply LLC; The Mount Sinai Hospital Queens; Sedation Vacation Perioperative Medicine PLLC; UGP Acupuncture P.C.; and VIP Pharmacy Group declaring that (1) the non-party claimant Robin Collado Nunez is not an eligible injured person entitled to no-fault benefits under the subject insurance policy; and (2) plaintiff is not obligated to honor or pay current and/or future claims that the immediately aforementioned medical provider defendants, in their capacities as the claimant-defendant's assignees, submit under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the subject accident (NYSCEF Doc. 4).

In the Notice of Motion, plaintiff explains that it does not move as against the medical provider defendants FPA Hospital Based Non Par MT and The Mount Sinai Hospital School of Medicine d/b/a MSMC Emergency because it was unable to serve said medical provider defendants timely.

Plaintiff also does not move as against the medical provider defendant DNA Pharmacy Inc. (NYSCEF Doc. 4.)

On May 20, 2020, medical provider defendant Gaogui Leasing Corp. answered the complaint with various admissions, denials, and twenty-four Affirmative Defenses (NYSCEF Doc. 20). Pursuant to a July 16, 2020 Stipulation, plaintiff discontinued, with prejudice, the instant action as against said medical provider defendant (NYSCEF Doc. 22).

Discussion

This Court deems medical provider defendant Bodybloom Services. Inc.'s February 6, 2020 Answer untimely. Said medical provider defendant was served, pursuant to BCL 306, on October 7, 2019. Pursuant to BCL 306(b)(1), "service of process on such corporation shall be complete when the secretary of state is so served." Thus, said medical provider defendant had had thirty days from October 7, 2019 in which to appear, which expired on November 6, 2019.

Plaintiff has established that it is entitled to a declaratory judgment on default as against ABA Chiropractic P.C.; Advanced Medical Concepts P.C.; Alexios Apazidis MD; Alexios Apazidis, M.D. P.C.; All City Family Healthcare Center, Inc; Bodybloom Services Inc.; Community Medical Imaging P.C.; CPM Med Supply Inc.; Elmont Rehab P.T. P.C.; Excell Clinical Lab Inc.; ISurply LLC; The Mount Sinai Hospital Queens; Sedation Vacation Perioperative Medicine PLLC; UGP Acupuncture P.C.; and VIP Pharmacy Group by submitting, pursuant to CPLR 3215(f), inter alia, the following: a copy of the summons and complaint; the subject affidavits of service and CPLR 3215(g) notice; and the February 3, 2020 affirmation of Megan Harris, Esq., plaintiff's attorney (NYSCEF Doc. 6).

To date, the immediately aforementioned medical provider defendants have failed to oppose or otherwise respond to the instant action in a timely manner, and their time to do so has expired.

Thus, plaintiff is entitled to a declaratory judgment on default as against the following medical provider defendants, only: Alexios Apazidis MD; Alexios Apazidis, M.D. P.C.; All City Family Healthcare Center, Inc; Bodybloom Services Inc.; Community Medical Imaging P.C.; CPM Med Supply Inc.; Elmont Rehab P.T. P.C.; Excell Clinical Lab Inc.; ISurply LLC; The Mount Sinai Hospital Queens; Sedation Vacation Perioperative Medicine PLLC; UGP Acupuncture P.C.; and VIP Pharmacy Group.

Conclusion

Thus, for the reasons stated herein, the motion of plaintiff, American Transit Insurance Company, for a declaratory judgment on default is hereby granted only as against the following medical provider defendants: Alexios Apazidis MD; Alexios Apazidis, M.D. P.C.; All City Family Healthcare Center, Inc; Bodybloom Services Inc.; Community Medical Imaging P.C.; CPM Med Supply Inc.; Elmont Rehab P.T. P.C.; Excell Clinical Lab Inc.; ISurply LLC; The Mount Sinai Hospital Queens; Sedation Vacation Perioperative Medicine PLLC; UGP Acupuncture P.C.; and VIP Pharmacy Group. Plaintiff's motion for a declaratory judgment on default is hereby denied as moot as against medical provider defendant Gaogui Leasing Corp., pursuant to a July 16, 2020 Stipulation of Discontinuance.

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that the non-party claimant, Robin Collado Nunez, is not an eligible injured person entitled to no-fault benefits under the subject insurance policy; (2) declaring that plaintiff is not obligated to honor or pay current and/or future claims that the immediately aforementioned medical provider defendants, in their capacities as the claimant-defendant's assignees, submit under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the subject accident; and (3) awarding costs and disbursements to plaintiff.



7/20/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE