

American Tr. Ins. Co. v Quinones

2020 NY Slip Op 33281(U)

October 6, 2020

Supreme Court, New York County

Docket Number: 152044/2019

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
COUNTY OF NEW YORK: PART IAS MOTION 37EFM

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

LETICIA QUINONES, ATLAS PHARMACY LLC, BROOK
CHIROPRACTIC OF NY P.C., FRANK SAUCHELLI, GEN
CEL DIAGNOSTICS, INTEGRATED CHIROPRACTIC OF
NY P.C., NEW YORK PAIN MANAGEMENT GROUP,
PLLC, PINETREE ACUPUNCTURE P.C., ROH PHYSICAL
THERAPY, P.C., TITAN PHARMACY

Defendant.

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INDEX NO. 152044/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. ARTHUR F. ENGORON:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

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

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

Background

On December 11, 2017, the claimant-defendant, Leticia Quinones, was allegedly injured in a motor vehicle accident. She subsequently sought treatment for injuries allegedly arising out of the subject alleged accident from the medical provider defendants, Atlas Pharmacy LLC; Brook Chiropractic of NY P.C.; Frank Sauchelli, MD; Gen Cel Diagnostics; Integrated Chiropractic of NY P.C.; New York Pain Management Group, PLLC; Pinetree Acupuncture P.C.; ROH Physical Therapy, P.C.; and Titan Pharmacy. The claimant-defendant 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 claimant-defendant was a passenger at the time of the subject alleged accident. The medical provider defendants, in their capacities as the claimant-defendant's assignees under the subject insurance policy, then submitted claims to plaintiff. On March 20 and April 17, 2018, the claimant-defendant failed to appear for an Independent Medical Examination ("IME") that plaintiff had scheduled and rescheduled. Consequently, plaintiff disclaimed any obligation to cover any losses and denied all coverage. (NYSCEF Doc. 1).

On January 9, 2019, plaintiff commenced the instant action against the claimant-defendant and the medical provider defendants, seeking a judgment declaring that (1) the claimant-defendant

breached a condition of plaintiff's insurance policy; and, therefore, (2) the claimant-defendant, and the medical provider defendants, in their capacities as the claimant-defendant's assignees, are not entitled to no-fault coverage, first party coverage, and/or first party no-fault benefits arising out of the subject alleged accident under the subject insurance policy (NYSCEF Doc. 1).

On May 6, 2019, medical provider defendant ROH Physical Therapy, P.C. ("ROH") answered the complaint timely with various admissions, denials, and eleven Affirmative Defenses (NYSCEF Doc. 2). ROH claims, "as plaintiff cannot prove the timely and proper denial of each and every bill, it is precluded from commending [sic] the instant action" and, thus, "is not entitled to the relief sought in the complaint" (NYSCEF Doc. 2, at 2).

Plaintiff now moves (1) pursuant to CPLR 3215, for a default judgment as against the claimant-defendant, Leticia Quinones, and the medical provider defendants Atlas Pharmacy LLC; Brook Chiropractic of NY P.C.; Frank Sauchelli, MD; Gen Cel Diagnostics; Integrated Chiropractic of NY P.C.; New York Pain Management Group, PLLC; Pinetree Acupuncture P.C.; and Titan Pharmacy (all except ROH); (2) pursuant to CPLR 3212, for summary judgment as against ROH; (3) a judgment declaring that the claimant-defendant is not an eligible injured person entitled to no-fault benefits under the subject insurance policy; and (4) a judgment declaring that plaintiff is not obligated to honor or pay current and/or future claims under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the subject alleged accident that the medical provider defendants, in their respective capacities as the claimant-defendant's assignees, submit or will submit (NYSCEF Doc. 5).

In opposition, ROH asserts, essentially, that plaintiff has failed to submit "admissible evidence" to this Court to meet plaintiff's burden to establish that it properly mailed the letters scheduling the claimant-defendant's IME and that the claimant-defendant failed to appear for said scheduled IMEs (NYSCEF Doc. 20).

Pursuant to a July 8, 2020 Stipulation, plaintiff discontinued the instant action as against medical provider defendant Atlas Pharmacy, LLC, only (NYSCEF Doc. 21).

Discussion

Late E-Filings Due to COVID-19-Related Court Filing Suspension

This Court accepts plaintiff's May 26, 2020 notice of motion despite its late filing, which plaintiff addresses in a May 26, 2020 letter to this Court (NYSCEF Doc. 6) due to the COVID-19 -related court filing suspension.

Plaintiff's Request for a Declaratory Judgment on Default

Plaintiff has established that it is entitled to a declaratory judgment on default as against the claimant-defendant and the medical provider defendants Brook Chiropractic of NY P.C.; Frank Sauchelli, MD; Gen Cel Diagnostics; Integrated Chiropractic of NY P.C.; New York Pain Management Group, PLLC; Pinetree Acupuncture P.C.; and Titan Pharmacy (the "defaulting defendants") by complying with CPLR 3215(f) by submitting, inter alia, the following: a copy of the summons and complaint; a copy of the subject affidavits of service and CPLR 3215(g) notice; and the May 26, 2020 affirmation of Ariana A. Pabalan, Esq., plaintiff's attorney. To

date, the defaulting defendants have failed to answer the complaint and/or oppose or otherwise respond to the instant motion, and their time to do so has expired. Thus, plaintiff is entitled to a declaratory judgment on default as against the defaulting defendants.

Plaintiff's Request for Summary Judgment as against ROH, only

In opposition, ROH asserts that the affidavits of Lynn Hershman and Eric Roth "lack proper caption" and, consequently "should be disregarded as inadmissible" (NYSCEF Doc. 21, at 1). ROH cites Maximum Physical Therapy, P.C. v Allstate Ins. Co., 8 Misc3d 1021(a) (NY City Civ. Ct. 2005).

However, this Court accepts said affidavits, as (1) they are compiled in an e-filing that contains affidavits with the proper caption; (2) they include some of the information that ROH mentions; (3) ROH can discern the information that it needs; and (4) ROH is not claiming, much less suffering, any prejudice. CPLR 2001.

This Court also finds that the subject affidavits sufficiently demonstrate the claimant-defendant's failure to appear for her scheduled and rescheduled IME. ROH has failed to submit an affidavit from the claimant-defendant, stating that the IME was not scheduled and rescheduled.

ROH also asserts that plaintiff failed to meet its burden to prove that it mailed the subject IME notices to the claimant-defendant and that it did so in a timely manner (NYSCEF Doc. 20, at 3 and 13). However, this Court finds that the appointment letters that plaintiff e-filed as Exhibit D (NYSCEF Doc. 12) meet this burden.

Thus, this Court finds ROH's opposition to plaintiff's request for summary judgment as against ROH, only, to be unavailing.

Conclusion

Thus, for the reasons stated herein, the request of plaintiff, American Transit Insurance Company, for a declaratory judgment on default is hereby granted as against the claimant-defendant, Leticia Quinones, and the medical provider defendants Brook Chiropractic of NY P.C.; Frank Sauchelli, MD; Gen Cel Diagnostics; Integrated Chiropractic of NY P.C.; New York Pain Management Group, PLLC; Pinetree Acupuncture P.C.; and Titan Pharmacy (the "defaulting defendants"). Plaintiff's request for a declaratory judgment on default is hereby denied without prejudice, solely as moot, pursuant to the July 8, 2020 Stipulation (NYSCEF Doc. 21) as against medical provider defendant Atlas Pharmacy, LLC. Plaintiff's request for summary judgment as against medical provider defendant ROH Physical Therapy, P.C. is hereby granted.

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that the claimant-defendant breached a condition of plaintiff's insurance policy; (2) declaring that the claimant-defendant, and all the medical provider defendants, except Atlas Pharmacy LLC (against whom plaintiff discontinued this action), in their capacities as the claimant-defendant's assignees, are not entitled to no-fault coverage, first party coverage, and/or first party no-fault benefits arising out of the subject alleged accident under the subject insurance policy; (3) declaring that the claimant-defendant is not an eligible injured person entitled to no-fault benefits under the subject

insurance policy; (4) declaring that plaintiff is not obligated to honor or pay current and/or future claims under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the subject alleged accident that the medical provider defendants, in their respective capacities as the claimant-defendant's assignees, submit or will submit; and (5) awarding costs and disbursements to plaintiff.

Arthur F
Engoron

Digitally signed by Arthur F. Engoron
DN: c=US, ou=NY County Supreme
Court, o=New York State Courts,
cn=Arthur F. Engoron,
e=AEENGORON@NYCOURTS.GOV
Reason: I authored, approved, am
ordering, and/or officially issuing it.
Location: 60 Centre Street, NYC, 10007,
Room 418
Date: 2020-10-06 10:47:43
Foxit PhantomPDF Version: 9.7.2

10/6/2020

DATE

ARTHUR F. ENGORON, J.S.C.

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