

**American Tr. Ins. Co. v Alegria-Paila**

2020 NY Slip Op 34078(U)

December 10, 2020

Supreme Court, New York County

Docket Number: 161869/2018

Judge: Debra A. James

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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. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

-----X  
AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

KATHERINE ALEGRIA-PAILLA, CITIMEDICAL I,  
PLLC, D.U.P. PHYSICAL THERAPY P.C., GENTLE WAY  
CHIROPRACTIC P.C., HEALTHY CHOICES MEDICAL  
CARE P.C., LIDA'S MEDICAL SUPPLY INC., and YSC  
TRINITY ACUPUNCTURE P.C.,

Defendants.

INDEX NO. 161869/2018  
MOTION DATE 07/21/2020  
MOTION SEQ. NO. 001

**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

were read on this motion to/for

JUDGMENT - DECLARATORY

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff American Transit Insurance Company for leave to enter a default judgment against defendants Katherine Tatiana Alegria-Pailla, Citimedical I, PLLC, D.U.P. Physical Therapy, P.C., Gentle Way Chiropractic P.C., Healthy Choices Medical Care P.C., Lida's Medical Supply Inc., and YSC Trinity Acupuncture P.C. is denied, with leave to renew upon the submission of proper papers, within thirty (30) days of service by regular first class mail of a copy of this order with notice of entry upon defendants at their last known addresses.

DECISION

This declaratory judgment action arises out of a motor vehicle accident that occurred on April 27, 2018, when the vehicle operated by plaintiff's insured, in which defendant Katherine Alegria-Pailla (Alegria-Pailla) was a passenger, was involved in a collision with another vehicle (NY St Cts Elec Filing [NYSCEF] Doc No. 12, Ethan A. Rothschild [Rothschild] affirmation, exhibit F, ¶¶ 11 and 15; NYSCEF Doc No. 9, Rothschild affirmation, exhibit C at 4). Alegria-Pailla received medical treatment from defendants Citimedical I, PLLC, D.U.P. Physical Therapy, P.C., Gentle Way Chiropractic P.C., Healthy Choices Medical Care P.C., Lida's Medical Supply Inc., and YSC Trinity Acupuncture P.C. (collectively, defendants). Alegria-Pailla has assigned her rights to receive no-fault benefits to such medical providers (NYSCEF Doc No. 12, ¶¶ 18-19). After Alegria-Pailla failed to appear for two independent medical examinations, plaintiff denied all coverage to defendants (id., ¶ 36).

Plaintiff then commenced this action for a judgment declaring that it is not obligated to provide no coverage for first-party benefits to defendants for treatment they rendered to their assignee, arising out of the April 27, 2018 motor vehicle accident.

Plaintiff now moves for entry of a default judgment against all defendants.

Plaintiff has submitted a complaint verified by an employee of plaintiff, which is sufficient proof of the merits of its claim. It has also filed affidavits of service of process, as required under CPLR 3215(f).

However, CPLR 2103 governs the service of papers in a pending action. Where a party is not represented, CPLR 2103 (c) states, in pertinent part, that "service shall be upon the party by a method specified in paragraph one, two, four, five or six of subdivision (b) of this rule." It is well settled that "service will be deemed complete upon mailing, and a properly executed affidavit of service will raise a presumption that proper mailing occurred" (Matter of ATM One, LLC v Landaverde, 2 NY3d 472, 478 [2004] [citations omitted]). Here, the affidavit of service sworn to March 11, 2020 with respect to the motion papers, states only

that the request for judicial intervention was served upon defendants, and makes no mention of any service of the actual motion papers (NYSCEF Doc No. 14 at 1). Thus, plaintiff has failed to establish service of the motion, and therefore, there is no proof that defendant defaulted as required pursuant to CPLR 3215(f).

12/10/2020

DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	

APPLICATION:

CHECK IF APPROPRIATE: