

American Tr. Ins. Co. v Ross
2021 NY Slip Op 31574(U)
May 10, 2021
Supreme Court, New York County
Docket Number: 155373/2020
Judge: Arthur F. Engoron
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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 -

SHADAY ROSS, A TO Z SUPPLIES GROUP INC,
ABETREE CHIROPRACTIC, PC, ADVANCED PHARMACY
ONE INC, ANANTHAKUMAR THILLAINATHAN, MD, AZAR
SASAN, MD, BARNERT SURGICAL CENTER, BROOKLYN
DOC MEDICAL P.C., CITIMEDICAL SERVICES,
P.C., COMPLETE NEUROPSYCHOLOGY, P.C., DR. SS
MATRANGOLO, D.C., EPIC PAIN MANAGEMENT &
ANESTHESIA CONSULTANTS LLC, MEDPLANET
INC., NEW MILLENNIUM MEDICAL IMAGING,
P.C., PERFORMANCE CHIROPRACTIC, P.C., SMOOTH
TOUCH ACUPUNCTURE P.C., STARLIGHT P.T.
P.C., STEVE LOSIK, MD

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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 and for the reasons stated hereinbelow, (1) the instant request by plaintiff, American Transit Insurance Company, pursuant to CPLR 3215, for a default judgment is granted in part, on the merits and on default, and denied in part, solely as moot; and (2) the instant request by plaintiff, pursuant to CPLR 3212, for summary judgment is granted on the merits and on default.

Background

Prior to June 5, 2019, plaintiff, American Transit Insurance Company, issued an insurance policy (number CAP 614087) to non-party D Damas and KBK Inc. On June 5, 2019, the claimant-defendant, Shaday Ross, was allegedly injured in a motor vehicle accident while she was a passenger in a vehicle that the subject insurance policy covered. The claimant-defendant, as an alleged "eligible injured person" under the subject insurance policy, submitted a claim (number 1060032-02) to plaintiff. The claimant-defendant sought treatment for injuries allegedly arising out of the subject alleged accident from the medical provider defendants, namely, A to Z Supplies Group Inc; Abetree Chiropractic, PC; Advanced Pharmacy One Inc; Ananthakumar Thillainathan, MD; Azar Sasan, MD; Barnert Surgical Center; Brooklyn Doc Medical P.C.; Citimedical Services, P.C.; Complete Neuropsychology, P.C.; Dr. SS Matrangelo, D.C.; Epic

Pain Management & Anesthesia Consultants LLC; Medplanet Inc.; New Millennium Medical Imaging, P.C.; Performance Chiropractic, P.C.; Smooth Touch Acupuncture P.C.; Starlight P.T. P.C.; and Steve Losik, MD. The claimant-defendant assigned her right to collect No-Fault benefits to the medical provider defendants, who, in their respective capacities as the claimant-defendant's assignees under the subject insurance policy, submitted claims to plaintiff. On September 4 and 19, 2019, the claimant-defendant failed to appear for her scheduled and rescheduled Independent Medical Examination ("IME"), thereby breaching a condition of the subject insurance policy. Thus, plaintiff disclaimed all coverage. (NYSCEF Doc. 1.)

On or about July 15, 2020, plaintiff commenced the instant action against defendants, seeking a judgment (1) declaring that the claimant-defendant breached a condition of the subject insurance policy; (2) declaring that defendants are not entitled to No-Fault coverage, first-party coverage, and /or first-party No-Fault benefits under the subject insurance policy arising out of the subject alleged accident; and (3) awarding costs and disbursements to plaintiff (NYSCEF Doc. 1, at 12). Between September 4, 2020 and January 13, 2021, plaintiff served defendants with the pleadings and CPLR 3215(g) additional notice (NYSCEF Documents 17-19).

On January 28, 2021, medical provider defendant Advanced Pharmacy One, Inc. answered the instant complaint with various admissions, denials, and forty Affirmative Defenses (NYSCEF Doc. 6).

Plaintiff now moves, (1), pursuant to CPLR 3215, for a default judgment as against the claimant-defendant and medical provider defendants A to Z Supplies Group Inc; Abetree Chiropractic, PC; Ananthakumar Thillainathan, MD; Azar Sasan, MD; Barnert Surgical Center; Brooklyn Doc Medical P.C.; Citimedical Services, P.C.; Complete Neuropsychology, P.C.; Dr. SS Matrangolo, D.C.; Epic Pain Management & Anesthesia Consultants LLC; Medplanet Inc.; New Millennium Medical Imaging, P.C.; Performance Chiropractic, P.C.; Smooth Touch Acupuncture P.C.; Starlight P.T. P.C.; and Steve Losik, MD; (2), pursuant to CPLR 3212, for summary judgment as against medical provider defendant Advanced Pharmacy One Inc.; (3) for 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) for a judgment declaring that plaintiff is not obligated to honor and/or pay any current and/or future claims, including under the Mandatory Personal Injury Protection endorsement, for reimbursement that the medical provider defendants, in their respective capacities as the claimant-defendant's assignees under the subject insurance policy, submit and/or will submit to plaintiff under the subject insurance policy, arising out of the subject alleged accident (NYSCEF Doc. 8).

Pursuant to an April 22, 2021 stipulation, plaintiff discontinued the instant action with prejudice as against medical provider defendants Dr. SS Matrangolo, D.C. and Performance Chiropractic, P.C., only (NYSCEF Doc. 21).

Pursuant to a May 6, 2021 stipulation, plaintiff discontinued the instant action with prejudice as against medical provider defendants Abetree Chiropractic, PC; and Ananthakumar Thillainathan, MD (NYSCEF Doc. 23).

Discussion

Plaintiff's CPLR 3215 Request for a Default Judgment

Plaintiff has established that it is entitled to a default judgment against the claimant-defendant and medical provider defendants A to Z Supplies Group Inc; Azar Sasan, MD; Barnert Surgical Center; Brooklyn Doc Medical P.C.; Citimedical Services, P.C.; Complete Neuropsychology, P.C.; Epic Pain Management & Anesthesia Consultants LLC; Medplanet Inc.; New Millennium Medical Imaging, P.C.; Smooth Touch Acupuncture P.C.; Starlight P.T. P.C.; and Steve Losik, MD (the immediately-aforementioned medical provider defendants and the claimant-defendant, collectively, "the defaulting defendants") and is entitled to the relief that plaintiff seeks in the instant complaint by complying with CPLR 3215(f) and (g) by submitting the following, among other documents: copies of the subject summons and verified complaint (NYSCEF Doc. 16); copies of the subject affidavits of service and CPLR 3215(g) additional notice (NYSCEF Documents 17-18); and the March 17, 2021 affirmation of R. Jacob Lamar, Esq., plaintiff's attorney (NYSCEF Doc. 10).

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

Plaintiff is not entitled to a default judgment as against medical provider defendants Abtree Chiropractic, PC; Ananthakumar Thillainathan, MD; Dr. SS Matrangolo, D.C.; and Performance Chiropractic, P.C. pursuant to the aforementioned April 22 and May 6, 2021 stipulations of discontinuance as against those medical provider defendants (NYSCEF Documents 21 and 23).

Plaintiff's CPLR 3212 Request for Summary Judgment

To prevail on summary judgment, the moving party must tender sufficient evidence to demonstrate the absence of any material issue of fact and entitlement to judgment in its favor as a matter of law. See Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); Ayotte v Gervasio, 81 NY2d, 1062 (1993). Once the movant has met its initial burden, it then shifts to the party opposing the motion to submit evidentiary proof sufficient to create material issues of fact requiring a trial; mere conclusions and unsubstantiated allegations are insufficient. See Zuckerman v City of New York, 49 NY2d 557, 562 (1980); see generally American Sav. Bank v Imperato, 159 AD2d 444, 444 (1st Dept. 1990) ("The presentation of a shadowy semblance of an issue is insufficient to defeat summary judgment").

Plaintiff has established that that there are no material issue(s) of fact in this matter and, thus, that plaintiff is entitled to summary judgment against medical provider defendant Advanced Pharmacy One Inc. by submitting the following, among other documents: the March 12, 2021 affidavit of merit of Cheryl Glaze, a No-Fault Claims Supervisor for plaintiff (NYSCEF Doc. 11); the September 25, 2019 affidavit of Michael Russ, M.D., asserting that on September 4 and 19, 2019, the claimant-defendant failed to appear for the subject scheduled and rescheduled IME (NYSCEF Doc. 11); and the subject correspondence scheduling and rescheduling the claimant-defendant's subject IME (NYSCEF Doc. 14).

To date, medical provider defendant Advanced Pharmacy One Inc. has failed to oppose or otherwise respond to the instant motion, and its time to do so has expired.

Therefore, plaintiff is entitled to summary judgment against medical provider defendant Advanced Pharmacy One Inc.

Conclusion

Thus, for the reasons stated hereinabove, (1) the instant request by plaintiff, American Transit Insurance Company, pursuant to CPLR 3215, for a default judgment is hereby granted, on the merits and on default, as against the claimant-defendant, Shaday Ross, and medical provider defendants A to Z Supplies Group Inc; Azar Sasan, MD; Barnert Surgical Center; Brooklyn Doc Medical P.C.; Citimedical Services, P.C.; Complete Neuropsychology, P.C.; Epic Pain Management & Anesthesia Consultants LLC; Medplanet Inc.; New Millennium Medical Imaging, P.C.; Smooth Touch Acupuncture P.C.; Starlight P.T. P.C.; and Steve Losik, MD and is hereby denied, solely as moot pursuant to the aforementioned April 22 and May 6, 2021 stipulations of discontinuance (NYSCEF Documents 21 and 23), as against medical provider defendants Abetree Chiropractic, PC; Ananthakumar Thillainathan, MD; Dr. SS Matrangolo, D.C.; and Performance Chiropractic, P.C.; and (2) the instant request by plaintiff, pursuant to CPLR 3212, for summary judgment against medical provider defendant Advanced Pharmacy One Inc. is hereby granted, on the merits and on default.

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that the claimant-defendant breached a condition of the subject insurance policy (number CAP 614087); (2) declaring that the defaulting defendants are not entitled to No-Fault coverage, first-party coverage, and /or first-party No-Fault benefits under the subject insurance policy arising out of the alleged June 5, 2019 accident; (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 and/or pay any current and/or future claims, including under the Mandatory Personal Injury Protection endorsement, for reimbursement that the defaulting medical provider defendants, in their respective capacities as the claimant-defendant’s assignees under the subject insurance policy, submit and/or will submit to plaintiff under the subject insurance policy, arising out of the alleged June 5, 2019 accident; and (5) awarding costs and disbursements to plaintiff.

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5/10/2021

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

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REFERENCE

ARTHUR F. ENGORON, J.S.C.