

American Tr. Ins. Co., v Brito
2021 NY Slip Op 32381(U)
November 18, 2021
Supreme Court, New York County
Docket Number: Index No. 653036/2021
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

JUAN BRITO, ATLAS PT PC, CHELSEA MOBILITY,
FAIRPOINT ACUPUNCTURE P.C., ISOKINETIC PHYSICAL
THERAPY PLLC, JAM PHARMACY CORP, MEDAID
RADIOLOGY LLC, METRO PAIN SPECIALISTS PC, MJG
MEDICAL PC, NILE REHAB PHYSICAL THERAPY PC, QI
LONGFELLOW ACUPUNCTURE PC, SCARBOROUGH
CHIROPRACTIC PC, SPRUCE MEDICAL & DIAGNOSTIC
PC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

Upon the foregoing documents, it is

The following read on plaintiff's motion for a default judgment, CPLR 3215, in relation to the assignment of no-fault benefits from JUAN BRITO, for the alleged motor vehicle accident on January 21, 2019, with policy number B613918, and claim number 1049814-01.

A stipulation of discontinuance has been filed for CHELSEA MOBILITY, JAM PHARMACY CORP, and SPRUCE MEDICAL & DIAGNOSTIC PC (see NYSCEF Doc. No. 13 Par. 4). Answers have been submitted by FAIRPOINT ACUPUNCTURE PC, MEDAID RADIOLOGY LLC, METRO PAIN SPECIALISTS PC, and NILE REHAB PHYSICAL THERAPY PC (see NYSCEF Doc. No. 13 Par. 3).

A summons and complaint state a cause of action for a declaratory judgment, that there lies no-fault coverage for benefits claimed by defendant Juan Brito and all medical provider defendants (see NYSCEF Doc. No. 1).

Defendant JUAN BRITO was served per CPLR 308(2) deliver-and-mail, and he is not in the military (see NYSCEF Doc. No. 27). Defendants ATLAST PT PC (see NYSCEF Doc. No. 14), ISOKINETIC PHYSICAL THERAPY PLLC (see NYSCEF Doc. No. 17), MJG MEDICAL PC (see NYSCEF Doc. No. 21), QI LONGFELLOW ACUPUNCTURE PC (see NYSCEF Doc. No. 23), and SCARBOROUGH CHIROPRACTIC PC (see NYSCEF Doc. No. 24) were served by delivering the summons and complaint to the Secretary of State.

Plaintiff now moves for a default judgment, CPLR 3215 against JUAN BRITO, ATLAS PT PC, ISOKINETIC PHYSICAL THERAPY PLLC, MJG MEDICAL PC, QI LONGFELLOW ACUPUNCTURE PC, and SCARBOROUGH CHIROPRACTIC PC. Said defendants have not appeared nor answered in this litigation.

Affidavits of service for the additional notice requirements of CPLR 3215(g) have been submitted for ATLAST PT PC (see NYSCEF Doc. No. 10), MJG MEDICAL PC (see NYSCEF Doc. No. 5), QI LONGFELLOW ACUPUNCTURE PC (see NYSCEF Doc. No. 7), and SCARBOROUGH CHIROPRACTIC PC (see NYSCEF Doc. No. 8).

This court cannot find the additional notice of CPLR 3215(g) for JUAN BRITO, nor ISOKINETIC PHYSICAL THERAPY PLLC.

An affirmation of service for the notice of motion has been submitted for JUAN BRITO, ATLAS PT PC, ISOKINETIC PHYSICAL THERAPY PLLC, MJG MEDICAL PC, QI LONGFELLOW ACUPUNCTURE PC, and SCARBOROUGH CHIROPRACTIC PC (see NYSCEF Doc. No. 36).

Plaintiff's affirmation highlights *State Farm*, "no-fault insurance policies cover only vehicular accidents. A deliberate collision is not a covered accident" (see *State Farm Mutual Automobile Ins. Co. v. Laguerre*, 305 A.D.2d 490 [2nd Dept. 2003]). Further, "[t]he denial of liability based upon lack of coverage within the insurance agreement, as framed in part by the litigation strategy and nature of the instant dispute, is distinguishable from disclaimer attempts based on a breach of a policy condition" (see *Zappone v. Home Ins. Co.*, 55 N.Y.2d 136 [1982]).

"The founded belief that the alleged injuries did not arise as the result of a covered event can be established by circumstantial evidence (see *A.B. Med. Servs., PLLC v. State Farm Mut. Auto. Ins. Co.*, 7 Misc. 3d 822 [2005]).

An affidavit of merit from Uriel Mcleish, claims representative for plaintiff affirms,

"[a]n internal investigation determined that the non-party claimant's alleged injuries were not caused by the collision. There was no Police Accident Report. The police were not called to the scene. There were no damages such as broken windows or undercarriage damage. No airbags were deployed. Tow truck was not required to remove cab from the scene. Claimant was not bleeding at the scene. Claimant did not have any bruising, cuts, or lacerations at the scene. Claimant did not lose consciousness. The minor nature of the collision infers claimant exploited her involvement in this accident in an opportunistic fashion. The duration and characteristics of treatment are not consistent with the severity of the impact. Dr. David D. Manevitz performed a physical medicine and rehabilitation and acupuncture examination on claimant on 5/17/19. Dr. Manevitz found during the physical examination that claimant was not injured during the examination. Dr. Peter Chiu ... there was no medical necessity for the EMG/NCV testing. Dr. David Trimboli DC concluded that there was no medical necessity for the pf-NCS testing.

CPLR 3215(a) provides that "[w]hen a defendant has failed to appear, plead, or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him..."

Wherefore, it is hereby,

ORDERED that plaintiff's motion for a default judgment, CPLR 3215, against ATLAS PT PC, MJG MEDICAL PC, QI LONGFELLOW ACUPUNCTURE PC, and SCARBOROUGH CHIROPRACTIC PC is GRANTED; and it is further

ORDERED that plaintiff's motion for a default judgment, CPLR 3215, against JUAN BRITO, and ISOKINETIC PHYSICAL THERAPY PLLC is DENIED.

ORDERED, ADJUDGED, and DECLARED, that the defendants ATLAS PT PC, MJG MEDICAL PC, QI LONGFELLOW ACUPUNCTURE PC, and SCARBOROUGH CHIROPRACTIC PC are NOT entitled to no-fault benefits as a result of the alleged motor vehicle accident of January 21, 2019, involving JUAN BRITO, under insurance policy number B613918, and claim number 1049814-01.

11/18/2021
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE