

Ace Am. Ins. Co. v Asem Physical Therapy
2020 NY Slip Op 33196(U)
September 28, 2020
Supreme Court, New York County
Docket Number: 160097/2017
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO

PART

IAS MOTION 4

Justice

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INDEX NO. 160097/2017

ACE AMERICAN INSURANCE COMPANY,

MOTION DATE 04/07/2020

Plaintiff,

MOTION SEQ. NO. 002

- v -

ASEM PHYSICAL THERAPY, ARTHUR AVE MEDICAL SERVICES A/K/A ARTHUR AVE COMPREHENSIVE MEDICAL HEALTH SERVICES, P.C., EPIC PAIN MANAGEMENT & ANESTHESIA A/K/A EPIC PAIN MANAGEMENT & ANESTHESIA CONSULTANTS LLC, NY CHIROPRACTIC REHABILITATION CARE A/K/A NY CHIROPRACTIC REHABILITATION P.C., TRINITY MEDICINE P.C., AMC PSYCHOLOGY P.C., TAO ACUPUNCTURE P.C., PEDRO TORRES-JIMINEZ, MD, ALMATCARE MEDICAL SUPPLY INC., JEREMY WHITFIELD A/K/A JEREMY WHITFIELD, D.C., P.C., GABRIEL MEDICAL P.C., ELSANAA PT, MICHAEL GEORGE ALLEYNE A/K/A MICHAEL GEORGE ALLEYNE, M.D., P.C., ANDRE JOCELYN DUHAMEL (C.B.), JOANNA KUSHETSKY A/K/A JOANNA KUSHETSKY, PT, SUFFICIENT CHIROPRACTIC CARE, PLLC, BENJAMIN CHANTELLE, MARITZA ALLEYNE

DECISION + ORDER ON MOTION

Defendant.

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Plaintiff seeks an order, pursuant to CPLR § 3215, for a default judgment against defendants. The motion is unopposed.

This matter stems from an alleged motor vehicle accident causing injury to defendants Benjamin Chantelle and Maritza Alleyne (hereinafter "driving defendants"). The driving defendants rented a vehicle owned by the Hertz Corporation and insured by plaintiff. The police report indicates the driving defendants' vehicle rear-ended another vehicle in Brooklyn, although the section of the report providing from an estimated cost of damage was left blank (MV-104 Report - NYSCEF Doc. No. 35). Plaintiff contends

that the driving defendants thereafter began extensive medical treatment for injuries alleged to have resulted from the accident, despite not reporting injuries at the accident scene and the accident causing only minimal damage to the subject vehicles (Padover Affirmation at p. 3 – NYSCEF Doc. No. 32). Plaintiff, in essence, alleges the accident was intentional and an insurance fraud scheme.

As an initial matter, plaintiff admits it has failed to perfect service, despite being granted a previous extension to do so, upon Pedro Torres-Jiminez, MD, Jeremy Whitfield a/k/a Jeremy Whitfield, D.C., P.C., Andre Jocelyn Duhamel (C.N.), and Joanna Kushetsky a/k/a Joanna Kushetsky, P.T.. Consequently, plaintiff concedes dismissal of the action against these unserved defendants is proper (Padover Affirmation at p. 3 – NYSCEF Doc. No. 32).

CPLR § 3215(a) provides that a plaintiff may obtain a default judgment when a defendant has failed to appear or plead. The plaintiff must provide proof of service of the summons and complaint, proof of the underlying facts constituting the claim, and proof of default (CPLR § 3215(f); *see also SRMOF II 2012-I Trust v. Tella*, 239 AD3d 599 [1st Dept 2016]; *Green Tree Servicing, LLC v. Cary*, 106 AD3d 691, 692 [2d Dept 2013]).

Here, the defendants have failed to appear on this motion, and plaintiff has provided proof of service of its summons and complaint on defendants (Affidavits of Service – NYSCEF Doc. No. 34, 39, and 41). Plaintiff has also established the defendants are not entitled to no-fault benefits or supplementary

uninsured/underinsured motorist coverage (SUM/UM) under the instant policy due to the staged and intentional nature of the accident, as well as the defendants' failure to appear for examination under oath or subscribe and return the transcripts of their examinations under oath (*see generally Hertz Vehs., LLC v. Gejo, LLC*, 161 AD3d 549 [1st Dept 2018]; Padover Affirmation at p. 5 and Boucher Affirmation at p. 13-24 – NYSCEF Doc. No. 32). Therefore, plaintiff has met its burden under CPLR § 3215 and established the facts underlying its claim and the defendants' default.

Accordingly, it is

ORDERED that the action is dismissed as against Pedro Torres-Jiminez, MD, Jeremy Whitfield a/k/a Jeremy Whitfield, D.C., P.C., Andre Jocelyn Duhamel (C.N.), and Joanna Kushetsky a/k/a Joanna Kushetsky, P.T. for want of personal jurisdiction; and it is further

ORDERED that plaintiff's motion for default judgment is granted as against ASEM Physical Therapy, Arthur Ave Medical Services a/k/a Arthur Ave Comprehensive Medical Health Services, P.C., Epic Pain Management & Anesthesia a/k/a Epic Pain Management & Anesthesia Consultants LLC, NY Chiropractic Rehabilitation Care a/k/a NY Chiropractic Rehabilitation P.C., Trinity Medicine P.C., AMC Psychology P.C., Tao Acupuncture P.C., Almatcare Medical Supply INC., Gabriel Medical P.C., ELSANAA PT, Michael George Alleyne a/k/a Michael George Alleyne, M.D., P.C., Sufficient Chiropractic Care, PLLC, Benjamin Chantelle, and Maritza Alleyne ("defaulting defendants"); and it is further

ORDERED that the defaulting defendants are not entitled to no-fault benefits for the vehicle accident alleged to have occurred on September 23, 2016; and it is further

ORDERED that within ten days of its entry by the Clerk, plaintiff shall serve a copy of this order with notice of entry on ASEM Physical Therapy, Arthur Ave Medical Services a/k/a Arthur Ave Comprehensive Medical Health Services, P.C., Epic Pain Management & Anesthesia a/k/a Epic Pain Management & Anesthesia Consultants LLC, NY Chiropractic Rehabilitation Care a/k/a NY Chiropractic Rehabilitation P.C., Trinity Medicine P.C., AMC Psychology P.C., Tao Acupuncture P.C., Almatcare Medical Supply INC., Gabriel Medical P.C., ELSANAA PT, Michael George Alleyne a/k/a Michael George Alleyne, M.D., P.C., Sufficient Chiropractic Care, PLLC, Benjamin Chantelle, Maritza Alleyne, the County Clerk, and the Clerk of the Trial Support Office.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/28/2020
DATE



FRANK P. NERVO, J.S.C.

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