

American Tr. Ins. Co. v Gonzalez

2020 NY Slip Op 33297(U)

October 7, 2020

Supreme Court, New York County

Docket Number: 154780/2019

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
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

KELVIN GONZALEZ, ACTIVE RANGE P.T. P.C., CHELSEA
MOBILITY INC, GARA MEDICAL CARE, P.C., P&D
MERCHANDISE CORP., PARKSIDE CHIROPRACTIC,
P.C., SBH PHYSICIANS, P.C., ST. BARNABAS HOSPITAL,
URBAN MEDICAL, P.C, WELCOME CHIROPRACTIC, P.C,
WELLNESS PLAZA ACUPUNCTURE
P.C., WESTCHESTER RADIOLOGY & IMAGING,
P.C., WISE REHAB P.T. P.C

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for

JUDGMENT - DECLARATORY

Upon the foregoing documents, it is

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

Background

On June 13, 2017, the claimant-defendant, Kelvin Gonzalez, was allegedly injured in a motor vehicle accident. He subsequently sought treatment for injuries allegedly arising out of the subject alleged accident from the medical provider defendants Active Range P.T. P.C.; Chelsea Mobility Inc; Gara Medical Care, P.C; P&D Merchandise Corp.; Parkside Chiropractic, P.C.; SBH Physicians, P.C.; St. Barnabas Hospital; Urban Medical, P.C.; Welcome Chiropractic, P.C.; Wellness Plaza Acupuncture P.C.; Westchester Radiology & Imaging, P.C.; and Wise Rehab P.T. P.C. 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 August 29 and September 12, 2017, the claimant-defendant failed to appear for an Independent Medical Examination ("IME") that plaintiff had scheduled and rescheduled. Consequently, plaintiff denied all coverage. (NYSCEF Doc. 1).

On May 6, 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, at 12).

Pursuant to a July 1, 2019 stipulation, plaintiff discontinued the instant action as against medical provider defendant P&D Merchandise Corp., only (NYSCEF Doc. 2).

Pursuant to a July 5, 2019 stipulation, plaintiff discontinued the instant action as against medical provider defendants Westchester Radiology & Imaging, P.C.; and Wise Rehab P.T. P.C., only (NYSCEF Doc. 3).

On October 16, 2019, medical provider defendants Wellness Plaza Acupuncture, P.C. and, surprisingly enough, Wise Rehab P.T. P.C. jointly answered the complaint with various admissions, denials, and fourteen Affirmative Defenses (NYSCEF Doc. 4).

On June 17, 2020, medical provider defendants Active Range P.T., P.C.; Parkside Chiropractic, P.C.; and Welcome Chiropractic, P.C. jointly answered the complaint with various admissions, denials, thirty-one Affirmative Defenses, and a counter-claim (NYSCEF Doc. 7).

Plaintiff now moves (1) pursuant to CPLR 3215, for a default judgment as against the claimant-defendant and medical provider defendants Active Range P.T. P.C.; Chelsea Mobility Inc.; Gara Medical Care P.C.; Parkside Chiropractic, P.C.; SBH Physicians P.C.; St. Barnabas Hospital; Urban Medical, P.C.; and Welcome Chiropractic, P.C.; (2) pursuant to CPLR 3212, for summary judgment as against medical provider defendant Wellness Plaza Acupuncture, P.C.; (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 or pay current and/or future claims that the medical provider defendants, in their capacities as the claimant-defendant's assignees, submitted or will submit under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the subject alleged accident (NYSCEF Doc. 10).

Pursuant to a June 25, 2020 stipulation, plaintiff discontinued the instant action as against medical provider defendant St. Barnabas Hospital, only (NYSCEF Doc. 8).

Pursuant to a July 2, 2020 stipulation, plaintiff discontinued the action as against medical provider defendants Active Range P.T., P.C.; Parkside Chiropractic, P.C.; and Welcome Chiropractic, P.C., only (NYSCEF Doc. 23).

Pursuant to a July 7, 2020 stipulation, plaintiff discontinued the instant action as against medical provider defendants St. Barnabas Hospital (apparently again) and SBH Physicians, P.C., only (NYSCEF Doc. 25).

Pursuant to a July 14, 2020 stipulation (one day late but that being of no moment), plaintiff withdrew the instant motion as against medical provider defendant Wellness Plaza Acupuncture, P.C., only (NYSCEF Doc. 26).

Discussion

Plaintiff has established that it is entitled to a declaratory judgment on default as against the claimant-defendant and medical provider defendants Chelsea Mobility Inc.; Gara Medical Care P.C.; and Urban Medical, P.C. by complying with CPLR 3215(f) by submitting, inter alia, the following: a copy of the subject summons and complaint; copies of the affidavits of service and CPLR 3215(g) notice; and the June 2, 2020 affirmation of Ethan A. Rothschild, Esq., plaintiff's attorney. To date, the claimant-defendant and medical provider defendants Chelsea Mobility Inc.; Gara Medical Care P.C.; and Urban Medical, P.C. 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 claimant-defendant and medical provider defendants Chelsea Mobility Inc.; Gara Medical Care P.C.; and Urban Medical, P.C.

Pursuant to the July 14, 2020 stipulation, this Court will deny, as withdrawn, plaintiff's request for summary judgment as against medical provider defendant Wellness Plaza Acupuncture, P.C. (NYSCEF Doc. 26).

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, Kelvin Gonzalez, and medical provider defendants Chelsea Mobility Inc.; Gara Medical Care P.C.; and Urban Medical, P.C. Plaintiff's request for a declaratory judgment on default as against Active Range P.T. P.C.; Parkside Chiropractic, P.C.; SBH Physicians P.C.; St. Barnabas Hospital; and Welcome Chiropractic, P.C. is hereby denied pursuant to stipulations of discontinuance (NYSCEF Doc. 8, 23, and 25). Plaintiff's request for summary judgment as against medical provider defendant Wellness Plaza Acupuncture, P.C. is hereby denied as withdrawn pursuant to the July 14, 2020 stipulation. Accordingly, the Clerk is hereby directed to enter judgment declaring that (1) the claimant-defendant breached a condition of plaintiff's insurance policy; (2) the claimant-defendant is not an eligible injured person entitled to no-fault benefits under the subject insurance policy; (3) 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 alleged June 13, 2017 accident under the subject insurance policy; and (4) plaintiff is not obligated to honor or pay current and/or future claims that the medical provider defendants, in their capacities as the claimant-defendant's assignees, submitted or will submit under the subject insurance policy and/or the Mandatory Personal Injury Protection Endorsement for no-fault benefits arising out of the alleged June 13, 2017 accident; and awarding costs and disbursements to plaintiff.

This Court requests that medical provider defendant Wellness Plaza Acupuncture, P.C. (plaintiff withdrew the instant motion as against said medical provider defendant but has not discontinued the instant action as against said medical provider defendant) please contact our part clerk

Margie Ramos-Ciancio via email at mciancio@nycourts.gov to schedule a preliminary conference, remembering to copy all parties on the email.

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10/7/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
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"/>	REFERENCE