

**Pyramid Care, P.T, P.C. v American Tr. Ins Co**

2024 NY Slip Op 31559(U)

April 22, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-725053-2019

Judge: Brian L. Gotlieb

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This opinion is uncorrected and not selected for official publication.

**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS PART 71**

PYRAMID CARE, P.T., P.C. AS ASSIGNEE OF  
DESMANGLES, JOSE R.,

Index Number: CV-725053-2019

Plaintiff,

**DECISION AFTER TRIAL**

-against-

AMERICAN TRANSIT INS CO,

Defendant.

Plaintiff, Pyramid Care, P.T., P.C. as assignee of Desmangles, Jose R., commenced this action for non-payment of first party no-fault benefits seeking monetary damages in the amount of \$203.22 through the filing of a Summons and Complaint on May 24, 2019.

The within matter was referred to the undersigned in Part 71 for trial on March 5, 2024 by Part 15 NF Final NFA. Plaintiff appeared by Florence Zabokritsky, Esq. of counsel to The Rybak Firm, PLLC, 1810 Voorhies Avenue, Brooklyn, NY 11235. Defendant appeared by Samuel A. Kamara, Esq., of counsel to the Law Office of Daniel J. Tucker, Esq., One Metro Tech Center, 7<sup>th</sup> Floor, Brooklyn, NY 11201. A virtual bench trial was conducted before the undersigned on March 5, 2024.

Pursuant to the trial stipulation entered into by the parties, each side had established their prima facie case and the sole remaining issues to be resolved at trial were the defenses preserved in defendant's denials.

Plaintiff, having already established its prima facie case pursuant to the above stated trial stipulation, rested without calling a witness to testify.

Paragraphs three (3) and four (4) of the trial stipulation states, in relevant part:

*3. It shall be Defendant's burden at the time of trial to go forward and establish those defenses that Defendant intends to rely upon.*

*4. Pursuant to CPLR 3101(d), Defendant is to produce to Plaintiff expert witness disclosure at least twenty-one (21) days prior to the final trial date, if applicable. In addition to Defendant's CPLR 3101(d) disclosure, Defendant shall include all documents Defendant intends to use or rely upon at the time of trial, or be precluded from offering or relying upon that evidence or witness at the time of trial.*

In this matter, plaintiff uploaded its trial documentation at 10:01 am on February 1, 2024. Despite this matter having been set down for trial on January 12, 2024; February 2, 2024;

February 23, 2024; March 1, 2024; March 4, 2024; and March 5, 2024, defendant never uploaded any documents. Defendant's failure to upload documents in advance of the trial is in violation of the trial stipulation and prevailing Court rules requiring the uploading of documents that litigants intend to offer into evidence at the time of trial. This was admitted to by defense counsel who asked the Court to excuse defendant's failure to comply, as it was due to unintentional human error, and to take judicial notice of an Order, dated September 12, 2023, issued by the Hon. Louis L. Nock, J.S.C. in the case of American Transit Insurance Company v Jose Desmangles et al under index number 652315/2022 (in Supreme Court, New York County). According to defendant, said Declaratory Judgment Order provided, inter alia, that defendant American Transit Insurance Company had no duty to provide, pay or honor any claim that is at issue in this action.

Even though this Court is loath to reward defendant for its failure to comply with the terms of the stipulation or this Court's rules, the failure to consider Judge Nock's Order would, in this Court's opinion, result in the needless waste of limited judicial resources. A review of the Order provides that defendant is not obligated to honor, pay, or reimburse any claims "for benefits under plaintiff American Transit Insurance Company's policy number CS 405370, claim number 1008073-02, or to provide, pay, honor, or reimburse any claims of the said defendants arising out of the motor vehicle collision of September 24, 2017 involving defendant Jose Desmangles."

As it is part of the Court file, the Court will take Judicial Notice of plaintiff's Summons and Complaint. According to paragraph eight (8) of the Complaint, the claims at issue in this action relate to claim number 1008072, not 1008073-02 as noted in Justice Nock's Order. The defendant never addressed this discrepancy or established that the case that was before Justice Nock stemmed from the same occurrence as this one.

Considering the foregoing, the Court can and will not hold that the claims at issue here are barred by Justice Nock's Declaratory Judgment Order. Notwithstanding defendant's lack of compliance with the above stated trial stipulation and Court rules, the Order, by itself, fails to establish that the claims asserted under claim numbers 1008072 and 1008073-02 stem from the same accident or that Jose Desmangles was involved in a single accident on September 24, 2017. The Court also notes that beyond Justice Nock's Order, which was submitted with the Court's permission over plaintiff's objection, defendant has not requested leave to submit or provide the Court with any additional evidence – be it testamentary or documentary.

Accordingly, plaintiff is granted leave to enter a judgment in the amount of \$203.22 plus statutory interest, attorney fees, costs, and disbursements to be calculated by the Judgment Clerk.

This is the Decision and Order of the Court.

Dated: April 22, 2024  
Brooklyn, NY

*Hon. Brian L. Gotlieb, J.C.C.*

Hon. Brian L. Gotlieb, J.C.C.

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Kings Civil Court  
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