

BZ Chiropractic, P.C. v Allstate Ins. Co.
2015 NY Slip Op 32978(U)
November 16, 2015
Civil Court of the City of New York, Queens County
Docket Number: 70935/00
Judge: Terrence C. O'Connor
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**CIVIL COURT OF THE CITY OF NEW YORK
QUEENS COUNTY-Part 40**

Present: **HON. TERRENCE C. O'CONNOR**

----- X
BZ CHIROPRACTIC, P.C.
As Assignee of TONY DANCE,

Plaintiff,

- against-

NO-FAULT
Index No.: 70935/00

Motion Date: 10/28/15
Motion No.: 1

DECISION AND ORDER

ALLSTATE INSURANCE COMPANY,

Defendant.
----- X

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion by respondent to dismiss the petition:

PAPERS	NUMBERED
Motion -Affidavits.....	1
Affirmation in Opposition.....	2
Reply.....	3
Sur-Reply.....	4

Upon the foregoing cited papers, it is ordered that this application for a protective order and other relief, is decided as follows:

Defendant seeks, *inter alia*, a protective order and modification of the judgment pursuant to CPLR 5240 and discharge of the judgment, pursuant to CPLR 5209.

Plaintiff brought this action to recover first party benefits for medical services rendered to its assignor, plaintiff TONY DANCE. Plaintiff's motion for summary judgment resulted in an order granting summary judgment in favor of plaintiff, without opposition on November 2, 2001. Judgment in the amount of \$ 8847.49 was entered on November 15, 2001. It is undisputed that the amount of the judgment was paid by defendant in July 2015. On or about August 11, 2015, plaintiff served American Express with an Information Subpoena and Restraining Notice which seeks to collect a total sum of \$ 227, 060.57 which purports to be the amount of the judgment (\$ 8847.49) plus accrued interest and costs from November 15, 2001 through August 11, 2015.

Defendant argues that plaintiff caused an unreasonably delay in the court proceedings within the meaning of 11 NYCRR 65-3.9, formerly 11 NYCRR 65.15(h)(4) prior to the April 5, 2002 amendment to the regulations. It is defendant's contention that due to the nearly fifteen(15) year delay, plaintiff should be relieved from the obligation of paying all of the accrued interest.

Defendant denies receipt of the summary judgment motion which resulted in the entry of the judgment. According to plaintiff's Exhibit "C", The Statement for Judgment with Copy of Order with Notice of entry was served upon Robert Tusa, Esq.(defendants' previous counsel), on November 13, 2001. Defendant acknowledges that it was served the summons and that an answer was filed. Although Edward E. Neves, Esq. attests to the office practices in place which are designed to insure the entry of motions and judgments into the computer system, no explanation is offered for defendant's failure to follow-up with the outcome of the within proceeding.

In opposition, plaintiff explains that plaintiff's previous attorney was suspended from the practice of law for one(1) year commencing on November 30, 2005. Plaintiff's present attorney admits, that it was at this juncture that plaintiff "lost track of the judgment". (See, Affirmation of Ali Weinberg, Esq. at paragraph 14.)

It was not until this year that plaintiff attempted to collect the judgment by sending a letter dated June 10, 2015 to defendant's attorney and by serving the afore-mentioned Information Subpoena and Restraining Notice.

This court notes that defendant's Exhibit "F" contains copies of (2) cancelled checks. One(1) in the amount of \$ 7852.49, payable to B Z Chiropractic and the other for \$ 990.00, payable to Amos Weinberg, Esq.. These checks total \$ 8842.49, which is \$ 5.00 short of the judgment amount.

Based upon the admissible evidence and the relevant law, this court finds that the plaintiff admittedly unreasonably allowed the accrual of compound interest for almost fifteen(15) years. It is inexcusable for plaintiff to benefit from knowingly allowing time to pass while compound interest accrues. Therefore, interest shall not accrue for the period of November 1, 2005, the date that defendant "lost track of the judgment" through June 19, 2015, the date that the defendant received the letter seeking collection.

The court has examined defendant's remaining contentions and finds them to be without merit or in view of this court's determination, academic.

Accordingly, defendant's motion is granted solely to the following extent:
Judgment to be entered in accordance with the above determination, along with attorney's fees and costs.

This constitutes the decision and order of this court.

Dated: November 16, 2015
Jamaica, New York


TERRENCE C. O'CONNOR, J.C.C.