

American Tr. Ins. Co. v Bentinck

2016 NY Slip Op 31994(U)

September 9, 2016

Supreme Court, Bronx County

Docket Number: 304599/14

Judge: Wilma Guzman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
IAS PART 7**

Index No.304599/14
Motion Calendar No. 3
Motion Date: 5/9/16

AMERICAN TRANSIT INSURANCE COMPANY.

Plaintiff(s),
-against-

DECISION/ ORDER

Present:
Hon. Wilma Guzman
Justice Supreme Court,

MARVIN A. BENTINCK, AT BAY
CHIROPRACTIC, P.C., ELECTROPHYSIOLOGIC
MEDICAL DIAGNOSTICS, P.C., FOUR NEEDLES
ACUPUNCTURE, P.C., KENDILWORTH MEDICAL
P.C., KENSINGTON RADIOLOGY GROUP., P.C.,
KINGSBROOK JEWISH MEDICL CENTER,
METROPOLITAN MEDICAL & SURGICAL, P.C.,
NORTH AMERICAN PARTNERS IN
ANESTHESIA, L.L.P., SANFORD R. WERT, M.D.,
P.C., VERASO MEDICAL SUPPLY, CORP.,

Defendant(s).

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for an Order granting default judgment against the defendants:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Attorney's Affirmation in Support, and Exhibits Thereto.....	1

Upon the foregoing papers, the Decision/Order on this motion is as follows:

Plaintiff American Transit Insurance Company (hereinafter referred to as "ATIC") moves for an Order granting a (1) default judgment pursuant to C.P.L.R. § 3215 granting ATIC a judgment on default against individual defendants, MARVIN A. BENTINCK, AT BAY CHIROPRACTIC, P.C., FOUR NEEDLES ACUPUNCTURE, P.C., KENDILWORTH MEDICAL P.C., KENSINGTON RADIOLOGY GROUP., P.C., KINGSBROOK JEWISH MEDICL CENTER, SANFORD R. WERT, M.D., P.C., VERASO MEDICAL SUPPLY, CORP., for failure to answer or appear in this action; (2) for an order pursuant to CPLR §3212 granting ATIC summary judgment against defendants, ELECTROPHYSIOLOGIC MEDICAL DIAGNOSTICS, P.C.,

METROPOLITAN MEDICAL & SURGICAL, P.C., and NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., (3) for an order granting ATIC a declaratory judgment that individual defendant, MARVIN A. BENTINCK, is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy CAP 613062 AND CLAIM NO. 776100-5; (4) for an order granting ATIC a declaratory judgment that ATIC is not obligated to honor or pay claims for reimbursement submitted by the "Providers" collectively the co-defendants named herein, as assignees of BENTINCK, under ATIC insurance policy from the alleged accident of March 24, 2014 and (5) for an order granting ATIC a declaratory judgment that ATIC is not required to provide, pay or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy CAP6133062, Claim No: 776100-05, nor pay or reimburse any claims set forth herein, in any current or future proceeding seeking to recover no-fault from the alleged accident of March 24, 2014 involving defendant, Bentinck, as Bentinck is not an eligible injured person as defined by the Policy and/or New York State Regulation 68. No personal appearance in opposition to the motion having been made on the scheduled oral argument date, the within motion is submitted on default of all defendants herein.

This case arises from an automobile accident on March 24, 2014 wherein individual defendant, Marvin A. Bentinck, allegedly received personal injuries. On March 24, 2014, a vehicle owned by the insured Bengal Limo Service Inc. was involved in an accident. ATIC issued an Insurance Policy to Bengal Limo Service Inc., under New York Policy of insurance numbered CAP613062. Defendant, Bentinck submitted a claim to ATIC, as a purported eligible injured person of the above-referenced insurance policy and claim number 776100-05 was assigned. Pursuant to the policy, the applicable no-fault statute permits insurers to request either an Independent Medical Examination (IME) or Examination Under Oath (EUO). Pursuant to the no-fault endorsement, ATIC requested that Marvin A. Bentinck, appear for an independent medical examination by at the office of Dr. Frank Olivetto, to be held on May 7, 2014. . Mr. Bentinck failed to appeared. A second request was made to appear for an IME on May 22, 2014 at the office of Dr. Robert Pick. Again, Mr. Bentinck failed to appear. Two requests were made and scheduled. Mr. Bentinck failed to appear for the IME which were scheduled for May 7, 2014 and May 22, 2014 . Based upon Mr. Bentinck's failure to appear at the scheduled IMEs the claim was denied and all

bills submitted by the defendants providers were denied .

In support of the motion, plaintiff submits copies of the pleadings, affidavits of service upon all defendants of the summons and complaint and the additional notices as required by CPLR§3215(g)(4), copies of the notices requesting that Bentinck appear for the IME and copies of the denial forms of Bentinck's no-fault claim to the defendants providers.

Plaintiff has established that the defendant, Marvin A. Bentinck was served pursuant to CPLR Article # on November 28, 2014. In addition, that all the domestic corporations and/or professional corporations were also served pursuant to CPLR Article 3 by serving the New York State Secretary of State on December 2, 2014. The additional notices required pursuant to CPLR§3215(g)(3)(I) and 3215(g)(4) were sent to the defendants on June 30, 2015 to their respective last known addresses.

To date the non appearing defendants have failed to either appear, plead or proceed in this matter or request an extension of time to answer and have not opposed the motion. In addition, although the defendants, ELECTROPHYSIOLOGIC MEDICAL DIAGNOSTICS, P.C., METROPOLITAN MEDICAL & SURGICAL, P.C., and NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., appeared by service of an answer together with cross-claims, they failed to appear and oppose the within motion. As such, the plaintiff's motion is granted.

Accordingly, it is

ORDERED that the plaintiff's motion seeking a default judgment against the defendants, MARVIN A. BENTINCK, AT BAY CHIROPRACTIC, P.C., FOUR NEEDLES ACUPUNCTURE, P.C., KENDILWORTH MEDICAL P.C., KENSINGTON RADIOLOGY GROUP, P.C., KINGSBROOK JEWISH MEDICAL CENTER, SANFORD R. WERT, M.D., P.C., VERASO MEDICAL SUPPLY, CORP., is hereby granted on default, and it is further

ORDERED that the plaintiff's motion seeking summary judgment against the defendants, ELECTROPHYSIOLOGIC MEDICAL DIAGNOSTICS, P.C., METROPOLITAN MEDICAL & SURGICAL, P.C., and NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., is hereby granted, and it is further

ORDERED that the plaintiff is granted a declaratory judgment that ATIC is not obligated to honor or pay claims for reimbursements submitted by the "Providers" (hereinabove

collectively the co-defendants named herein) as assignees of MARVIN A. BENTINCK; and it is further

ORDERED that defendant, MARVIN A. BENTINCK, is not an eligible person entitled to no-fault benefits under American Transit Insurance Company's Insurance policy number CAP 613062 and bearing claim number 776100-05.; and it is further

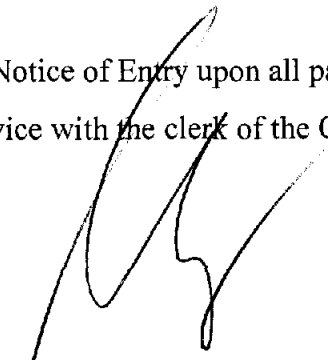
ORDERED that the plaintiff AMERICAN TRANSIT INSURANCE COMPANY is not obligated to honor or pay claims for reimbursements submitted by the following defendants: MARVIN A. BENTINCK, AT BAY CHIROPRACTIC, P.C., ELECTROPHYSIOLOGIC MEDICAL DIAGNOSTICS, P.C., FOUR NEEDLES ACUPUNCTURE, P.C., KENDILWORTH MEDICAL P.C., KENSINGTON RADIOLOGY GROUP., P.C., KINGSBROOK JEWISH MEDICL CENTER, METROPOLITAN MEDICAL & SURGICAL, P.C., NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., SANFORD R. WERT, M.D., P.C., VERASO MEDICAL SUPPLY, CORP., , as assignees of Marvin A. Bentinck., under American Transit Insurance Company Insurance Policy number CAP 613062, claim number 776100-05, from the alleged incident on March 24, 2014, involving Marvin A. Bentinck.; and it is further

ORDERED that the plaintiff AMERICAN TRANSIT INSURANCE COMPANY is not obligated to honor, pay or provide any current or future claims for reimbursements under the no fault benefits under the Mandatory Personal Injury Protection endorsement insurance policy CAP613062 from the alleged incident on March 24, 2014 involving Marvin A. Bentinck., submitted by the aforementioned defendants; and It is further

ORDERED that plaintiff serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order and file proof of service with the clerk of the Court.

This constitutes the Decision and Order of this Court.

9/9/16
DATE


HON. WILMA GUZMAN, JSC.