

Unitrin Direct Ins. Co. v Tsatskis
2017 NY Slip Op 31425(U)
July 5, 2017
Supreme Court, New York County
Docket Number: 158414/2016
Judge: Robert D. Kalish
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. _____ ROBERT D. KALISH
Justice

PART 29

UNITRIN DIRECT INSURANCE COMPANY,

Plaintiff,

INDEX NO. 158414/2016

MOTION DATE 06/15/17

MOTION SEQ. NO. 002

- v -

**BORIS TSATSKIS, M.D., GOTTO MEDICAL CARE, P.C.,
VINCENT J. GULFO, M.D., P.C., PRECISION IMAGING
OF NEW YORK, P.C. and MICHELLE GADDY,**

Defendants.

The following papers, numbered 25-33 were read on this motion to reargue.

Order to Show Cause (Proposed)—Affirmation—Exhibits A-B; Signed Order
to Show Cause—Proof of Service; Brief in Further Support—Proof of Service

No(s). 25-33 _____

Motion by Plaintiff Unitrin Direct Insurance Company to reargue its prior motion for entry of default judgments against Defendants Boris Tsatskis, M.D., Gotto Medical Care, P.C., Precision Imaging of New York, P.C. and Michelle Gaddy (collectively, “Defaulting Defendants”) is granted as follows:

BACKGROUND

This is an action for a declaratory judgment relating to insurance coverage for the treatment of injuries allegedly suffered by Defendant Michelle Gaddy. Defendant Gaddy was allegedly struck by a motor vehicle driven by non-party Susan Peretz on December 20, 2015 as she walking through a gas station.

On the instant motion, Plaintiff seeks to reargue its prior motion for entry of default judgments (Seq. 001) against the aforesaid Defaulting Defendants. On that prior motion, the Court granted Plaintiff’s motion as against all Defaulting Defendants except Defendants Boris Tsatskis, M.D and Precision Imaging of New York, P.C. (Decision and Order of May 19, 2017 [NYSCEF Document No. 24].)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

On the prior motion, the Court found that “Plaintiff alleges sufficient proof for the Court to enter a default judgment as against Defendant Gaddy.” (*Id.* at 6.) The Court’s finding was not an ultimate determination on the merits, but rather was limited to finding that Plaintiff presented a prima facie case—for its claim that a covered loss did not occur on December 20, 2015—sufficient to entitle Plaintiff to entry of a default judgment as against Defendant Gaddy. (*Id.*)

However, the Court denied the branch of Plaintiff’s motion for entry of default judgments as against Defendant Tsatskis and Defendant Precision Imaging. Regarding Defendant Tsatskis, the Court found that Plaintiff failed to comply with the timing requirements of 11 NYCRR 65-3.6 for requesting an examination under oath (EUO). (*Id.* at 8-9.) The Court found that “Plaintiff does not discuss or cite to any evidence supporting why coverage can properly be denied as against Defendant Precision Imaging of New York, P.C. (*Id.* at 9.)

Plaintiff now specifically argues that the Court erred in denying those two branches of the prior motion. Specifically, Plaintiff argues that because the Court found that Plaintiff made out a prima facie case that Defendant Gaddy’s injuries did not result from a covered accident, this prima facie finding required that default judgments be entered against all Defaulting Defendants.

DISCUSSION

A motion for reargument “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” (CPLR 2221 [d].) “Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision.” (*Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc.*, 147 AD3d 1106 [2d Dept 2017] [internal quotation marks and emendation omitted].) “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992].)

Upon review of the submitted papers, the Court finds that the Plaintiff has established an adequate basis for reargument and upon reargument the Court hereby grants a default judgment for the Plaintiff as against all of the Defaulting Defendants. Although the Court makes no determination as to whether the

evidence proffered on this motion would be sufficient to sustain Plaintiff's burden at a trial or on a motion for summary judgment, this Court does find that Plaintiff has presented a prima facie case that the "the loss was not a legitimate event and that the injuries alleged by the claimant did not arise from an insured incident" so as to entitle Plaintiff to entry of default judgments against all of the Defaulting Defendants. (Brief in Further Support ¶ 6.) The standard of proof here was "not stringent, amounting only to some firsthand confirmation of the facts." (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994].)

The Court further recognizes that the Plaintiff has established that it served both the prior motion and the instant motion to reargue upon the Defaulting Defendants, none of which have appeared in opposition to either the prior motion or the instant motion to reargue.

Given that the Court made this above prima facie finding, it is appropriate to grant entry of default judgments against all the Defaulting Defendants. This conclusion is "buttressed" by the failure of the Defaulting Defendants to appear and oppose the instant motion. (*A.B. Med. Services, PLLC v State Farm Mut. Auto. Ins. Co.*, 7 Misc 3d 822, 831 [Civ Ct, Kings County 2005].)

CONCLUSION

Accordingly, it is hereby

ORDERED that Plaintiff Unitrin Direct Insurance Company's motion for leave to reargue its motion for entry of default judgments is granted; and it is further

ORDERED that, upon reargument, the Court modifies its prior order of May 19, 2017 (NYSCEF Document No. 24) such that Plaintiff Unitrin Direct Insurance Company's motion (Seq. 001) for entry of default judgments against all Defaulting Defendants, including Boris Tsatskis, M.D. and Precision Imaging of New York, P.C. is granted; and it is further

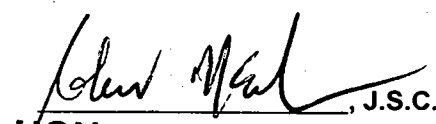
ADJUDGED that Defendants Boris Tsatskis, M.D and Precision Imaging of New York, P.C. have no rights under the policy of insurance and that Plaintiff owes no duty to these said Defendants to pay No-Fault claims with respect to the above-referenced December 20, 2015 incident referenced by claim number C000273NY16; and it is further

ORDERED that Plaintiff Unitrin Direct Insurance Company shall serve a copy of the instant Order with notice of entry upon all remaining parties; and it is further

ORDERED that the clerk shall enter judgment accordingly.

The Foregoing constitutes the ORDER, JUDGMENT and Decision of the Court.

Dated: July 5, 2017
New York, New York


HON. ROBERT D. KALISH
J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE