

American Tr. Ins. Co. v Taylor
2018 NY Slip Op 30010(U)
January 3, 2018
Supreme Court, New York County
Docket Number: 157305/2016
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

-against-

Index No: 157305/2016

DECISION AND ORDER

KASIM TAYLOR, ADVANCED CLINICAL
LABORATORY SOLUTIONS, INC., CITIMEDICAL
I, PLLC, HEALTHY LIVING CHIROPRACTIC,
P.C., INJURED WORKERS PHARMACY, LLC, JM
HEALTH ACUPUNCTURE P.C., LONG ISLAND
EMERGENCY CARE, P.C., LONG ISLAND SPINE
& ORTHOPEDICS, P.C., MERCY MEDICAL
CENTER, MERRICK MEDICAL P.C.,
METROPOLITAN MEDICAL & SURGICAL P.C.,
NASSAU ANESTHESIA ASSOCIATES, P. C.,
PHILIP M. RAFIY MD, VIRTUAL RADIOLOGIC
PROFESSIONALS OF NEW YORK, P.A., VSENAM
MEDICAL SUPPLY, INC, and WINTHROP
UNIVERSITY HOSPITAL

Defendants.

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

Papers	Numbered
Notice of Motion and Affidavits/ Exhibits	<u>1</u>

ERIKA M. EDWARDS, J.:

Plaintiff American Transit Insurance Company ("American Transit") now moves, by notice of motion, filed on October 30, 2017, for a default judgment in its favor, pursuant to CPLR §3215, against ADVANCED CLINICAL LABORATORY SOLUTIONS, INC., CITIMEDICAL I, PLLC, HEALTHY LIVING CHIROPRACTIC, P.C., INJURED WORKERS

PHARMACY, LLC, JM HEALTH ACUPUNCTURE P.C., MERRICK MEDICAL P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NASSAU ANESTHESIA ASSOCIATES, P. C. and VSENAM MEDICAL SUPPLY, INC. (collectively “Defaulting Defendants”) for their failure to answer or appear in this action.¹ American Transit also moves for summary judgment against answering Defendants LONG ISLAND SPINE & ORTHOPEDICS, P.C. and PHILIP M. RAFIY MD.² For the reasons set forth herein, American Transit’s motion for default judgment is GRANTED without opposition to the extent that default judgment is entered in American Transit’s favor as against Defaulting Defendants. American Transit’s motion for summary judgment against Defendants LONG ISLAND SPINE & ORTHOPEDICS, P.C. and PHILIP M. RAFIY MD is DENIED as moot.

Plaintiff American Transit commenced this action on August 31, 2016, for a judgment declaring that it owes no duty to pay any No-Fault benefits arising out of an alleged motor vehicle accident which occurred on March 20, 2015. The individual defendant Kasim Taylor (hereafter “Claimant”), was a passenger in one of the vehicles involved in the accident that was insured by American Transit. The vehicle’s insurance policy included the mandatory no-fault endorsement. The complaint alleges that after American Transit received notice of the accident, it attempted to investigate and subsequently requested that Claimant appear for an Independent Medical Examination (“IME”). Despite due demand, Claimant failed to appear for his scheduled IME on more than two occasions. Those failures to appear violated provisions in the No-Fault

¹ American Transit is not seeking relief against Defendant Kasim Taylor due to its inability to timely serve Mr. Taylor and is not seeking relief against Defendants Virtual Radiologic Professionals of New York, P.A. and Winthrop University Hospital per stipulation between the parties.

² After filing the instant motion, American Transit discontinued the matter against Defendants Long Island Spine & Orthopedics, P.C. Philip M. Rafiy MD, Long Island Emergency Care, P.C., and Mercy Medical Center.

Regulations and violated conditions precedent to coverage for all No-Fault claims submitted by Claimant and the medical provider defendants as his assignees.

Pursuant to CPLR 3215, American Transit has demonstrated that Defaulting Defendants were properly served with the summons and complaint, that Defaulting Defendants failed to answer or appear in this action, that the time to do so has long since passed, and that American Transit's claims are meritorious.

Accordingly, it is hereby

ORDERED that Plaintiff American Transit Insurance Company's motion for default judgment as against Defendants ADVANCED CLINICAL LABORATORY SOLUTIONS, INC., CITIMEDICAL I, PLLC, HEALTHY LIVING CHIROPRACTIC, P.C., INJURED WORKERS PHARMACY, LLC, JM HEALTH ACUPUNCTURE P.C., MERRICK MEDICAL P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NASSAU ANESTHESIA ASSOCIATES, P. C. and VSEAM MEDICAL SUPPLY, INC. is granted; and it is further

ORDERED that the Clerk is directed to enter default judgment in favor of Plaintiff American Transit Insurance Company as against Defendants ADVANCED CLINICAL LABORATORY SOLUTIONS, INC., CITIMEDICAL I, PLLC, HEALTHY LIVING CHIROPRACTIC, P.C., INJURED WORKERS PHARMACY, LLC, JM HEALTH ACUPUNCTURE P.C., MERRICK MEDICAL P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NASSAU ANESTHESIA ASSOCIATES, P. C. and VSEAM MEDICAL SUPPLY, INC.; and it is further;

ORDERED that Plaintiff American Transit Insurance Company's motion for summary judgment as against Defendants LONG ISLAND SPINE & ORTHOPEDICS, P.C. and PHILIP M. RAFIY MD is denied as moot since Plaintiff discontinued the matter against Defendants

LONG ISLAND SPINE & ORTHOPEDICS, P.C. and PHILIP M. RAFIY MD after filing the instant motion; and it is further

ADJUDGED and DECLARED that Kasim Taylor is not an eligible injured person entitled to no-fault benefits under American Transit Insurance Company insurance policy CAP 613985, Claim No.: 781269-06; and it is further

ADJUDGED and DECLARED that American Transit Insurance Company is not obligated to honor or pay claims for reimbursement submitted by the providers named herein, as assignees of Kasim Taylor, under American Transit Insurance Company insurance policy CAP 613985, Claim No.: 781269-06, nor is American Transit Insurance Company required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under American Transit Insurance Company insurance policy CAP 613985, Claim No.: 781269-06 from the alleged accident of March 20, 2015 involving Kasim Taylor as Kasim Taylor is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ADJUDGED and DECLARED that Plaintiff American Transit Insurance Company 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 American Transit Insurance Company insurance policy CAP 613985, Claim No.: 781269-06, nor is American Transit Insurance Company required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under American Transit Insurance Company insurance policy CAP 613985, Claim No.: 781269-06 from the alleged accident of March 20, 2015 involving

Kasim Taylor as Kasim Taylor is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ORDERED that as per previously submitted Stipulations by the parties, the complaint is dismissed in its entirety, with prejudice and without cost, as against Defendants Long Island Spine & Orthopedics, P.C. Philip M. Rafiy MD, Long Island Emergency Care, P.C., Mercy Medical Center, Virtual Radiologic Professionals of New York, P.A. and Winthrop University Hospital only and the Clerk is directed to enter judgment accordingly in favor of said defendants.

This constitutes the decision and order of the court.

Date: January 3, 2018



HON. ERIKA M. EDWARDS, J.S.C.