

American Tr. Ins. Co. v Thomas
2018 NY Slip Op 30043(U)
January 10, 2018
Supreme Court, New York County
Docket Number: 157250/2016
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: 157250/2016

DECISION AND ORDER

ERIC I. THOMAS, ACCU REFERENCE MEDICAL
LAB LIMITED LIABILITY COMPANY, ALLAN
HAUSKNECHT, M.D. CENTRAL NEUROLOGY,
P.C., CITYWIDE REHAB, P.T., P.C., JEFFREY
COHEN, M.D. & MARK KRAMER, M.D., P.C.,
FIVE ELEMENTS ACUPUNCTURE P.C.,
INTEGRATED NEUROLOGICAL ASSOCIATES,
PLLC, PARADIGM NEUROLOGICAL SERVICES,
P.C., RENAISSANCE CHIROPRACTIC
WELLNESS, P.C., PHARMCORE INC d/b/a
HALLANDALE PHARMACY, GREEN ACRES
HOME CARE, INC d/b/a ISLAND SURGICAL
SUPPLY CO. and PATCHOGUE OPEN MRI, P.C.
d/b/a SOUTHWEST RADIOLOGY

Defendants.

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

Papers
Notice of Motion and Affidavits/
Exhibits

Numbered

1

ERIKA M. EDWARDS, J.:

Plaintiff American Transit Insurance Company ("American Transit") now moves, by notice of motion, filed on November 8, 2017, for a default judgment in its favor, pursuant to CPLR §3215, against ERIC I. THOMAS, ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, ALLAN HAUSKNECHT, M.D. CENTRAL NEUROLOGY, P.C., CITYWIDE REHAB, P.T., P.C., FIVE ELEMENTS ACUPUNCTURE P.C., INTEGRATED

NEUROLOGICAL ASSOCIATES, PLLC, PARADIGM NEUROLOGICAL SERVICES, P.C., RENAISSANCE CHIROPRACTIC WELLNESS, P.C., PHARMCORE INC d/b/a HALLANDALE PHARMACY, GREEN ACRES HOME CARE, INC d/b/a ISLAND SURGICAL SUPPLY CO. and PATCHOGUE OPEN MRI, P.C. d/b/a SOUTHWEST RADIOLOGY (collectively “Defaulting Defendants”) for their failure to answer or appear in this action.¹ 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.

Plaintiff American Transit commenced this action on August 30, 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 December 18, 2015. The individual defendant Eric I. Thomas (hereafter “Claimant”), was the driver of 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 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

¹ AMERICAN TRANSIT is not seeking relief as against defendant JEFFREY COHEN, M.D. & MARK KRAMER, M.D., P.C., due to an inability to timely serve.

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 ERIC I. THOMAS, ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, ALLAN HAUSKNECHT, M.D. CENTRAL NEUROLOGY, P.C., CITYWIDE REHAB, P.T., P.C., FIVE ELEMENTS ACUPUNCTURE P.C., INTEGRATED NEUROLOGICAL ASSOCIATES, PLLC, PARADIGM NEUROLOGICAL SERVICES, P.C., RENAISSANCE CHIROPRACTIC WELLNESS, P.C., PHARMCORE INC d/b/a HALLANDALE PHARMACY, GREEN ACRES HOME CARE, INC d/b/a ISLAND SURGICAL SUPPLY CO. and PATCHOGUE OPEN MRI, P.C. d/b/a SOUTHWEST RADIOLOGY 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 ERIC I. THOMAS, ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, ALLAN HAUSKNECHT, M.D. CENTRAL NEUROLOGY, P.C., CITYWIDE REHAB, P.T., P.C., FIVE ELEMENTS ACUPUNCTURE P.C., INTEGRATED NEUROLOGICAL ASSOCIATES, PLLC, PARADIGM NEUROLOGICAL SERVICES, P.C., RENAISSANCE CHIROPRACTIC WELLNESS, P.C., PHARMCORE INC d/b/a HALLANDALE PHARMACY, GREEN ACRES HOME CARE, INC d/b/a ISLAND SURGICAL SUPPLY CO. and PATCHOGUE OPEN MRI, P.C. d/b/a SOUTHWEST RADIOLOGY; and it is further;

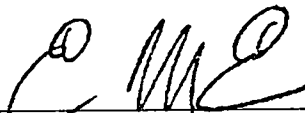
ADJUDGED and DECLARED that Eric I. Thomas is not an eligible injured person entitled to no-fault benefits under American Transit Insurance Company insurance policy CAP 612709, Claim No.: 786060-02; and it is further

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 Eric I. Thomas, under American Transit Insurance Company insurance policy CAP 612709, Claim No.: 786060-02, 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 612709, Claim No.: 786060-02 from the alleged accident of December 18, 2015 involving Eric I. Thomas as Eric I. Thomas 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 612709, Claim No.: 786060-02, 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 612709, Claim No.: 786060-02 from the alleged accident of December 18, 2015 involving Eric I. Thomas as Eric I. Thomas is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

This constitutes the decision and order of the court.

Date: January 10, 2018



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