

American Tr. Ins. Co. v Brown
2018 NY Slip Op 32883(U)
November 9, 2018
Supreme Court, New York County
Docket Number: 159700/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 45

Justice

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INDEX NO. 159700/2017

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 10/12/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

DEBORAH BROWN, ALEXANDER BALDONADO, BRONX
CHIROPRACTIC REHABILITATION P.C., DAMADIAN MRI IN
CANARSIE, P.C., ELEGANCE REHAB PT P.C., FJL MEDICAL
SERVICES P.C., HAMZA PHYSICAL THERAPY PLLC, MASTER
CHENG ACUPUNCTURE P.C., PROMPT MEDICAL SUPPLY,
INC., RALPH INNOVATIVE MEDICAL P.C., RX FOR YOU CORP,
SUN CHIROPRACTIC SERVICES P.C.

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19

were read on this motion to/for

JUDGMENT - DECLARATORY

Upon the foregoing documents:

Plaintiff American Transit Insurance Company seeks a default judgment and a
declaratory judgment against Defendant Deborah Brown ("Brown"), Defendant FJL Medical
Service P.C. ("FJL"), and the following Additional Defendants: Alexander Baldonado, Bronx
Chiropractic Rehabilitation P.C., Damadian MRI in Canarsie, P.C., Elegance Rehab PT P.C.,
Hamza Physical Therapy PLLC, Master Cheng Acupuncture P.C., Prompt Medical Supply, Inc.,
Ralph Innovative Medical P.C., RX For You Corp., and Sun Chiropractic Services P.C.
("Additional Defendants"). For the reasons described below, the motion is granted as to
Defendant Brown and the Additional Defendants, and denied as to Defendant FJL.

Defendant Brown and the Additional Defendants have failed to appear, answer or
otherwise move in this action. Nor did they submit opposition to the instant motion for a default
judgment.

Plaintiff has submitted un rebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Plaintiff is entitled to a default judgment and the declaratory relief sought in the Complaint with respect to Defendant Brown and the Additional Defendants. *See Hertz Vehicles, LLC v. Best Touch PT, P.C.*, 162 A.D.3d 617 (1st Dep't 2018) (properly awarding declaratory judgment by default upon Plaintiff's showing proof of facts constituting the claims and Defendant's failure to appear in action or oppose motion). Defendant Brown and the Additional Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR §5015 or CPLR §317, or any other applicable law.

Defendant FJL presents a different question. It filed an untimely Answer to the Complaint approximately six months after Defendant FJL was served with the Complaint. (NYSCEF 2, 6). Just over three weeks later, Plaintiff filed the instant default motion. (NYSCEF 7). CPLR § 2101(f) provides that a "party on whom a paper is served shall be deemed to have waived any objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections." Plaintiff did not object to Defendant FJL's answer, and as such has waived the defect of Defendant FJL's late response. *Cf. American Transit Ins. Co. v Baucage*, 146 A.D.3d 413, 413-14 (1st Dep't 2017) (finding that, in a factually identical matter, Plaintiff's motion for default judgment filed within fifteen days of an untimely response was sufficient to reject Defendant's untimely Answer). Accordingly, Defendant FJL is not in default.

Therefore it is:

ORDERED Plaintiff's Motion for a Default Judgment against Defendants Deborah Brown, Alexander Baldonado, Bronx Chiropractic Rehabilitation P.C., Damadian MRI in Canarsie, P.C., Elegance Rehab PT P.C., Hamza Physical Therapy PLLC, Master Cheng

Acupuncture P.C., Prompt Medical Supply, Inc., Ralph Innovative Medical P.C., RX For You Corp., and Sun Chiropractic Services P.C., is Granted; it is further

ORDERED that, consistent with the foregoing, it is adjudged and declared that Defendant Brown has breached a policy condition of the American Transit policy and therefore, the Defendants Deborah Brown, Alexander Baldonado, Bronx Chiropractic Rehabilitation P.C., Damadian MRI in Canarsie, P.C., Elegance Rehab PT P.C., Hamza Physical Therapy PLLC, Master Cheng Acupuncture P.C., Prompt Medical Supply, Inc., Ralph Innovative Medical P.C., RX For You Corp., and Sun Chiropractic Services P.C. are not entitled to no-fault coverage or first party coverage, as a result of a motor vehicle accident that occurred on October 7, 2016, and that none of the defendants are entitled to first party no-fault benefits, together with costs and disbursements in this action; and it is further

ORDERED, that upon presentation of a copy of this Decision and Order with notice of entry, accompanied by a proper form of judgement, the Clerk is hereby directed to permit entry of judgment in favor of Plaintiff American Transit Insurance Company and against Defendants Deborah Brown, Alexander Baldonado, Bronx Chiropractic Rehabilitation P.C., Damadian MRI in Canarsie, P.C., Elegance Rehab PT P.C., Hamza Physical Therapy PLLC, Master Cheng Acupuncture P.C., Prompt Medical Supply, Inc., Ralph Innovative Medical P.C., RX For You Corp., and Sun Chiropractic Services P.C.; and it is further

[CONTINUED ON FOLLOWING PAGE]

ORDERED Plaintiff's Motion for a Default Judgment against Defendant.FJL is Denied.

This constitutes the Decision and Order of the Court.

HON. JOEL M. COHEN
J.S.C.


JOEL M. COHEN, J.S.C.

11/9/2018
DATE

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE