

American Tr. Ins. Co. v Disla

2018 NY Slip Op 32941(U)

November 14, 2018

Supreme Court, New York County

Docket Number: 160607/2017

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45

Justice

INDEX NO. 160607/2017
MOTION DATE 10/12/2018
MOTION SEQ. NO. 001

AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff,

- v -

CHRISTOPHER DISLA, ACUPUNCTURE NOW P.C., BRONX
MEDICAL DIAGNOSTIC P.C., HAAR ORTHOPAEDICS & SPORTS
MEDICINE, P.C., HEALTHWAY MEDICAL CARE P.C., JULES
PARISIEN, LONGEVITY MEDICAL SUPPLY, INC., OPTIMUS
PRODUCTS OF USA, CORP., SB CHIROPRACTIC, P.C.

DECISION AND ORDER

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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 Christopher Disla, Defendants Bronx Medical Diagnostic P.C., Haar Orthopaedics & Sports Medicine, P.C., Optimus Products of USA Corp., ("Additional Defendants"), and Defendants Longevity Medical Supply Inc., Acupuncture Now P.C, Healthway Medical Care P.C., Jules Parisien, and SB Chiropractic P.C. ("Answering Defendants").

Defendant Disla and 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 unrebutted evidence demonstrating compliance with the requirements of CPLR § 3215. Plaintiff is entitled to a default judgment and the declaratory relief sought in the Complaint against Defendant Disla and 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).

Answering Defendants Acupuncture Now P.C., Healthway Medical Care P.C., Jules Parisien MD, Longevity Medical Supply Inc., and SB Chiropractic P.C., filed untimely Answers to the Complaint more than five months after the Answering Defendants were served with the Complaint, and the day after they were served with notice of the instant default motion. (NYSCEF 2, 7, 19). The Defendants have given no reasonable excuse as to why they failed to timely answer the complaint. In addition, any contention that Plaintiff accepted the untimely Answer by failing to reject it fails, as Defendants' answer was served after the motion for default judgment was made. *Estrella v. Herrera*, 12 A.D.3d 320, 321 (1st Dep't 2005). Accordingly, Plaintiff's motion for default judgment is granted as to the Answering Defendants.

The 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.

Answering Defendant Longevity Medical Supply Inc. ("Longevity"), filed a timely Answer with Counterclaims on March 29, 2018. Plaintiff seeks summary judgment against the Answering Defendant Longevity. Answering Defendant Longevity did not file an opposition to the motion for Summary Judgment. Summary judgment is an appropriate remedy when there are no material issues of fact to be decided at a trial. When material issues of fact do exist, summary judgment will not be granted. *See, e.g., Borst v Lower Manhattan Dev. Corp*, 162 A.D.3d 581, 582 (1st Dep't 2018).

Under New York law, assignees "stand in the shoes" of the assignor and thus acquire no greater rights than the assignor. *See Am. States Ins. Co. v Huff*, 119 A.D.3d 478, 479 (1st Dep't 2014). Defendant Longevity, as assignee of Defendant Disla, is only entitled to that to which

Disla is entitled. As determined above, Plaintiff is obtaining a default judgment against Disla granting the requested declaratory relief that Disla is not entitled to No-Fault benefits under American Transit Insurance Company's policy. Accordingly, the Defendant Longevity is similarly not entitled to such benefits under the policy. *See New York and Presbyt. Hosp. v Country-Wide Ins. Co.*, 17 N.Y.3d 586, 592 (2011) (as an assignee of all the rights, privileges and remedies to which the insured was entitled under the No-Fault Law, the provider stood in the shoes of the insured and acquired no greater rights than he had. Because the insured lost his benefits, the assignment "effectively became worthless"). Plaintiff's unopposed motion for summary judgment is granted

Therefore it is:

ORDERED Plaintiff's Motion for a Default Judgment against all Defendants is Granted; it is further;

ORDERED Plaintiff's Motion for Summary Judgment against Defendant Longevity Medical Supply Inc. is Granted; and it is further

ORDERED that, consistent with the foregoing, it is adjudged and declared that Defendant Christopher Disla has breached a policy condition of the American Transit policy and therefore, Defendants Bronx Medical Diagnostic P.C., Haar Orthopaedics & Sports Medicine, P.C., Optimus Products of USA Corp., Longevity Medical Supply Inc., Acupuncture Now P.C., Healthway Medical Care P.C., Jules Parisien, and SB Chiropractic P.C. are not entitled to no-fault coverage or first party coverage, as a result of a motor vehicle accident that occurred on January 19, 2017, 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 Christopher Disla, Bronx Medical Diagnostic P.C., Haar Orthopaedics & Sports Medicine, P.C., Optimus Products of USA Corp., Longevity Medical Supply Inc., Acupuncture Now P.C, Healthway Medical Care P.C., Jules Parisien, and SB Chiropractic P.C.

This constitutes the Decision and Order of the Court.

11/14/2018
DATE


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

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	