

American Tr. Ins. Co. v Jeanty
2019 NY Slip Op 33112(U)
September 12, 2019
Supreme Court, New York County
Docket Number: 656208/2018
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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INDEX NO. 656208/2018

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 09/20/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

JEAN JEANTY, BRONX CHIROPRACTIC
REHABILITATION PC, COMFORT PHYSICAL THERAPY
PLLC, DAMADIAN MRI IN CANARSIE PC, HARBOR
MEDICAL GROUP PC, HAMZA PHYSICAL THERAPY
PLLC, HANKROSS MD, JULES PARI SIEN, LIVINGSTON
PHYSICAL MEDICINE, MASTER CHENG ACUPUNCTURE
PC, NEW YORK CHIRO CARE PC, PSYCHOLOGY AFTER
ACCIDENT PC, RALPH INNOVATIVE MEDICAL PC, REHAB
CARE PHYSICAL THERAPY PC, RKD PHARMACY DBA
RKD RX CORP, SPINE CARE OF NJ PC, RVS SUPPLY
CORP, SOOD MEDICAL PRACTICE LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for

JUDGMENT - DEFAULT

In this declaratory judgment action brought under article 51 of the Insurance Law, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against individual defendant Jean Jeanty (Jeanty) and defendants Bronx Chiropractic Rehabilitation, PC, Comfort Physical Therapy, PLLC, Damadian MRI In Canarsie, PC, Harbor Medical Group, C, Hamza Physical Therapy, PLLC, Hank Ross, MD, Jules F. Parisien, MD, Livingston Physical Medicine, Master Cheng Acupuncture, PC, New York Chiro Care, PC, Psychology After Accident, PC, Ralph Innovative Medical, PC, Rehab Care Physical Therapy, PC, RKD Pharmacy dba RKD Rx Corp., Spine Care of NJ, PC, RVS Supply Corp. and Sood Medical Practice (the non-answering defendants) declaring that it is not obligated to pay no-fault benefits to Jeanty in connection with injuries she sustained in a motor vehicle accident, or to reimburse the defaulting

medical defendants for treatment they rendered or equipment and supplies they provided to Jeanty for those injuries. No opposition is submitted. The motion is granted.

Where a plaintiff moves for leave to enter a default judgment, he or she must submit proof of the facts constituting the claim, and proof of the defendant's defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1st Dept 2016]), timely move for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1st Dept 2015]), and satisfy the notice requirements for the motion (CPLR 3215[g]). CPLR 3215(f) requires a party moving for leave to enter a default judgment to submit to the court, among other things, "proof of the facts constituting the claim." "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action [see, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22-3215.27]." Joosten v Gale, 129 AD2d 531, 535 (1st Dept 1987); see Martinez v Reiner, 104 AD3d 477 (1st Dept 2013); Beltre v Babu, 32 AD3d 722 (1st Dept. 2006); Atlantic Cas. Ins. Co. v RJNJ Services, Inc. 89 AD3d 649 (2nd Dept. 2011). While the "quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered." Guzetti v City of New York, 32 AD3d 234, 236 (1st Dept. 2006). The proof submitted must establish a prima facie case. See id; Silberstein v Presbyterian Hosp., 95 AD2d 773 (2nd Dept. 1983).

Jeanty alleged in her application for benefits that she was injured in a motor vehicle accident on May 25, 2018, and that she thereafter obtained medical treatment or medical supplies from all of the other defendants. Those other defendants sought payment, as Jeanty's assignees, for no-fault benefits under insurance policy number B514785, Claim No. 1029472-01, as issued by the plaintiff. See Insurance Law 5106(a); 11 NYCRR 65-1.1. In support of its motion for leave to enter a default judgment against the defaulting medical defendants, the plaintiff submits the pleadings, an attorney's affirmation, a series of affidavits from its claims representatives, the NF-2 no-fault claim form submitted by Jeanty, dated June 22, 2018, and notices for an EUO that it sent to her, the first of which was on July 10, 2018. The plaintiff's submissions establish that within the prescribed time limits under NY 65-3.5(a-b) the initial notice for examination under oath (EUO) timely mailed to Jeanty. See Kemper Independence

Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1st Dept. 2017); National Liability & Fire Ins. Co. v Tam Med. Supply Corp., 131 AD3d 851, 851 (1st Dept 2015); American Transit Ins. Co. v Jaga Med. Servs., P.C., 128 AD3d 441, 441 (1st Dept 2015); Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC, 82 AD3d 559 (1st Dept. 2011). Although the EUO was scheduled beyond the thirty-day limit prescribed in NY 65-3.5(d), the court finds that this is a non-substantive and immaterial defect, as contemplated under NY 65-3.5(p), and therefore recovery is not barred.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment against non-answering defendants Jean Jeanty, Bronx Chiropractic Rehabilitation, PC, Comfort Physical Therapy, PLLC, Damadian MRI In Canarsie, PC, Harbor Medical Group, C, Hamza Physical Therapy, PLLC, Hank Ross, MD, Jules F. Parisien, MD, Livingston Physical Medicine, Master Cheng Acupuncture, PC, New York Chiro Care, PC, Psychology After Accident, PC, Ralphy Innovative Medical , PC, Rehab Care Physical Therapy, PC, RKD Pharmacy dba RKD Rx Corp., Spine Care of NJ, PC, RVS Supply Corp. and Sood Medical Practice is granted; and it is further,

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to the to the defendant Jean Jeanty in connection with injuries sustained in a motor vehicle accident on May 25, 2018, or to reimburse the defendants Bronx Chiropractic Rehabilitation, PC, Comfort Physical Therapy, PLLC, Damadian MRI In Canarsie, PC, Harbor Medical Group, C, Hamza Physical Therapy, PLLC, Hank Ross, MD, Jules F. Parisien, MD, Livingston Physical Medicine, Master Cheng Acupuncture, PC, New York Chiro Care, PC, Psychology After Accident, PC, Ralphy Innovative Medical , PC, Rehab Care Physical Therapy, PC, RKD Pharmacy dba RKD Rx Corp., Spine Care of NJ, PC, RVS Supply Corp. and Sood Medical Practice for treatment they rendered or equipment and supplies they provided to her for those injuries; and it is further,

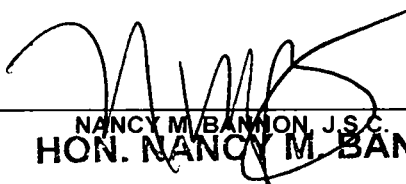
ADJUDGED AND DECLARED that all actions, proceedings, or arbitrations commenced by Jean Jeanty, Bronx Chiropractic Rehabilitation, PC, Comfort Physical Therapy, PLLC, Damadian MRI In Canarsie, PC, Harbor Medical Group, C, Hamza Physical Therapy, PLLC, Hank Ross, MD, Jules F. Parisien, MD, Livingston Physical Medicine, Master Cheng

Acupuncture, PC, New York Chiro Care, PC, Psychology After Accident, PC, Ralphy Innovative Medical , PC, Rehab Care Physical Therapy, PC, RKD Pharmacy dba RKD Rx Corp., Spine Care of NJ, PC, RVS Supply Corp. and Sood Medical Practice arising from injuries alleged to have been sustained by Jean Jeanty as a result of the May 25, 2018 accident are permanently stayed, and that the defendants are enjoined from commencing any such further actions, proceedings, or arbitrations; and it is further

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order.

This constitutes the Decision and Order of the court.

9/12/2019
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		