

**American Tr. Ins. Co. v Singh**

2019 NY Slip Op 33721(U)

December 20, 2019

Supreme Court, New York County

Docket Number: 650683/2019

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART IAS MOTION 42EFM**

*Justice*

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INDEX NO. 650683/2019

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 08/15/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

TALWINDER SINGH, CUSTOM RX PHARMACY  
LLC, JOURNEY ACUPUNCTURE PC, METROPOLITAN  
INTERVENTIONAL MEDICAL SERVICES PC, MOUNT  
SINAI MED SUPPLY INC, PEONY ACUPUNCTURE  
PC, SOUND CHIROPRACTIC & PHYSICAL THERAPY  
PC, SOUTHWEST MEDICAL IMAGING  
PC, THERAKINEMATIC PT PC, WELLBEING  
CHIROPRACTIC PC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for JUDGMENT - DEFAULT

In this action, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Talwinder Singh (the individual defendant) Custom Rx Pharmacy LLC, Journey Acupuncture P.C., Metropolitan Interventional Medical Services P.C., Mount Sinai Med Supply Inc., Peony Acupuncture P.C., Sound Chiropractic & Physical Therapy P.C., Southwest Medical Imaging P.C., and Therakinematic PT P.C. (the non-answering health-care defendants), declaring that it is not obligated to pay no-fault benefits to the individual defendant or the health-care defendants to reimburse them for treatment they rendered or medical equipment they provided to the individual defendant for injuries allegedly sustained in an auto accident on August 5, 2017 on the grounds that eligible injury party defendant failed to appear for duly scheduled Examinations Under Oath (EUOs). No opposition was submitted. The motion is granted.

As a preliminary matter the plaintiff withdrew this motion as against defendant Therapy Zone PT, P.C. Accordingly, the term “non-answering defendants” as used herein shall exclude Therapy Zone PT, P.C.

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 [1<sup>st</sup> Dept 2016]), timely move for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1<sup>st</sup> 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 (1<sup>st</sup> Dept 1987); see Martinez v Reiner, 104 AD3d 477 (1<sup>st</sup> Dept 2013); Beltre v Babu, 32 AD3d 722 (1<sup>st</sup> Dept. 2006); Atlantic Cas. Ins. Co. v RJNJ Services, Inc. 89 AD3d 649 (2<sup>nd</sup> 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 (1<sup>st</sup> Dept. 2006). The proof submitted must establish a prima facie case. See id.; Silberstein v Presbyterian Hosp., 95 AD2d 773 (2<sup>nd</sup> Dept. 1983).

In the application for no-fault benefits, the individual defendant alleged, *inter alia*, that he was injured in a motor vehicle accident on August 5, 2017, and that he thereafter obtained medical treatment or medical supplies from the health-care defendants. According to the plaintiff, the health-care defendants sought payment under claim number 1003036-02, as assignees of the individual defendant, for no-fault benefits under insurance policy number B600839. See Insurance Law 5106(a); 11 NYCRR 65-1.1. In support of its motion, plaintiff submits, *inter alia*, the NF-2 application form for no-fault benefits, received on September 5, 2017, and the scheduling letter, proof of mailing, and proof of no-show for two EUOs on October 19, 2017 and November 19, 2017, the first of which was mailed on September 19, 2017, and a general denial form dated November 29, 2017. These submissions demonstrate that the initial notice for an examination under oath (EUO) on September 19, 2017 was timely mailed to the individual defendant within 15 business days of its receipt of the NF-2 form, as required by 11

NYCRR 65-3.5(b), and that the individual defendant failed to appear for the duly scheduled EUO. 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 Tr. Ins. Co. v Jaga Med. Servs., P.C., 128 AD3d 441, 441 (1st Dept. 2015). The plaintiff consequently provided prima facie evidence that, by failing to appear, the individual defendant breached a condition precedent to the effectiveness of no-fault insurance coverage, thus vitiating that coverage. See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., supra; Hertz Corp. v Active Care Med. Supply Corp., 124 AD3d 411 (1st Dept. 2015); Allstate Ins. Co. v Pierre, 123 AD3d 618 (1st Dept. 2014).

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment against the defendants Talwinder Singh (the individual defendant) Custom Rx Pharmacy LLC, Journey Acupuncture P.C., Metropolitan Interventional Medical Services P.C., Mount Sinai Med Supply Inc., Peony Acupuncture P.C., Sound Chiropractic & Physical Therapy P.C., Southwest Medical Imaging P.C., and Therakinematic PT P.C. (the non-answering health-care defendants) is granted; and it is further,

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to the defendant Talwinder Singh for injuries that he allegedly sustained in a motor vehicle accident on August 5, 2017, or Custom Rx Pharmacy LLC, Journey Acupuncture P.C., Metropolitan Interventional Medical Services P.C., Mount Sinai Med Supply Inc., Peony Acupuncture P.C., Sound Chiropractic & Physical Therapy P.C., Southwest Medical Imaging P.C., and Therakinematic PT P.C., to reimburse them for treatment they rendered or medical equipment they provided to the individual defendant for injuries that he allegedly sustained in the motor vehicle accident of August 5, 2017; and it is further,

ORDERED that the plaintiff 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, Order, and Judgment of the court.

12/20/2019

DATE



NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE