

American Tr. Ins. Co. v Reyes
2020 NY Slip Op 30027(U)
January 3, 2020
Supreme Court, New York County
Docket Number: 157144/2018
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE PART 15

HON. MELISSA A. CRANE Justice J.S.C.

AMERICAN TRANSIT INSURANCE COMPANY

INDEX NO. 157144/2018
MOTION DATE
MOTION SEQ. NO. 001
MOTION CAL. NO.

- v -

MIREIDES HERNANDEZ REYES, ALLIANCE
MEDICAL GOODS, LLC, AXIOM PT & OT, PLUS, PLLC,
BROOKLYN CARDIOVASCULAR CARE, PLLC, GOOD CARE
PHARAMCY, INC, CTO MANAGEMENT, LLC d/b/a HEALTH EAST AMULATORY SURGICAL
CENTER, HOME PHYSICAL THERAPY SOLUTIONS, PC, HOWARD M. ROMBOM PHD
PSYCHOLOGIST, PC, LARRY M. NEUMAN, MD, NEURO-PAIN CARE, PC, NORTHEAST
ANESTHESIA AND PAIN MANAGEMENT, O AND P PLUS, LLC, ORTHOPAEDIC SPECIALIST
OF GREATER NEW YORK, PC, READY MEDICAL SERVE, PC, SOUTH DEAN
ORTHOPAEDICS, PLLC, SPENCER A. COLDEN, MD, URGENT MEDICAL CARE, PC

The following papers, numbered _ to _ were read on this motion to/for

PAPERS NUMBERED

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits
Replying Affidavits

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is

This case arises from an automobile accident that occurred on March 6, 2016, involving
defendant Mireides Hernandez Reyes ("Reyes"). Reyes alleges that he sustained serious bodily injuries
as a result of the March 6 collision, that involved the vehicle that the insured, Rafael L. Abreu, owned.
Reyes was a passenger in the vehicle. Reyes submitted claims to plaintiff, American Transit Insurance
Company ("American Transit") for no-fault benefits under the insurance policy that plaintiff issued to
the insured, Abreu. Reyes assigned the rights to collect no-fault benefits to co-defendants/medical
providers. Plaintiff commenced an action on or about July 31, 2018, by a Summons and Complaint,
seeking a declaratory judgment against claimant as well as numerous co-defendants/medical
providers under American Transit insurance policy CS A213444, Claim No: 665970-03.

First, plaintiff has discontinued this action against defendants HOWARD M. ROMBOM PHD PSYCHOLOGIST, PC, LARRY M. NEUMAN, MD, and SPENCER A. COLDEN, MD (*see* NYSCEF Doc No 18) (the “Releasing Defendants”).

Plaintiff, American Transit, now moves for a default judgment pursuant to CPLR 3215 against defendants MIREIDES HERNANDEZ REYES, HOME PHYSICAL THERAPY SOLUTIONS, PC, ALLIANCE MEDICAL GOODS, LLC, AXIOM PT & OT, PLUS, PLLC, BROOKLYN CARDIOVASULAR CARE, PLLC, GOOD CARE PHARAMCY, INC, CTO MANAGEMENT, LLC d/b/a HEALTH EAST AMULATORY SURGICAL CENTER, NEURO-PAIN CARE, PC, NORTHEAST ANESTHESIA AND PAIN MANAGEMENT, O AND P PLUS, LLC, ORTHOPAEDIC SPECIALIST OF GREATER NEW YORK, PC, READY MEDICAL SERVE, PC, SOUTH DEAN ORTHOPAEDICS, PLLC, URGENT MEDICAL CARE, PC.

Defendants MIREIDES HERNADEZ REYES and HOME PHYSICAL THERAPY SOLUTIONS, PC, filed an answer and counterclaims on March 4, 2019 in accordance with the stipulation that plaintiff and defendants Reyes and Home Physical Therapy Solutions, PC, entered into. On March 8, 2019, plaintiff filed a reply to defendants’ counterclaims. Defendants answer was timely pursuant to the January 4, 2019 stipulation. Plaintiffs have not shown that they have been prejudiced in any way. Therefore, the court denies plaintiff’s motion for default judgment as to defendants Reyes and Home Physical Therapy Solutions, PC.

As to the remaining nonanswering defendants, plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of defendant’s failure to answer or appear (*see* CPLR 3215; *see also*, *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]). Plaintiff demonstrates *prima facie* its denial of no-fault claims based Reyes’s failure to appear for scheduled Examination Under Oaths (“EUO”) on November 30, 2017 and January 31, 2018.

Plaintiff submits, *inter alia*: EUO request letters; an affidavit from Iris Hernandez, a claim examiner at American Transit, who attests to the processing of bills, requests for additional verification, issuance of denial of claim forms in this case; an affidavit from Cheryl Glaze, no-fault claims supervisor at American Transit, who attests to the mailing of the EUO scheduling letters; an affidavit from Luis Campbell, mailroom supervisor at American Transit; and a transcript from Kelley Minogue, an investigator with American Transit who was present on November 30, 2017, and a transcript from Lasil Williams, an EUO examiner with American Transit who was present on January 31, 2018, both of whom attest to plaintiff's non-appearance at the scheduled EUOs.

Accordingly, it is

ORDERED that the court grants plaintiff American Transit's motion for default judgment only against defendants ALLIANCE MEDICAL GOODS, LLC, AXIOM PT & OT, PLUS, PLLC, BROOKLYN CARDIOVASULAR CARE, PLLC, GOOD CARE PHARAMCY, INC, CTO MANAGEMENT, LLC d/b/a HEALTH EAST AMULATORY SURGICAL CENTER, NEURO-PAIN CARE, PC, NORTHEAST ANESTHESIA AND PAIN MANAGEMENT, O AND P PLUS, LLC, ORTHOPAEDIC SPECIALIST OF GREATER NEW YORK, PC, READY MEDICAL SERVE, PC, SOUTH DEAN ORTHOPAEDICS, PLLC, URGENT MEDICAL CARE, PC, and otherwise denies plaintiff's motion; and it is further


ADJUDGED AND DECLARED that defendants ALLIANCE MEDICAL GOODS, LLC, AXIOM PT & OT, PLUS, PLLC, BROOKLYN CARDIOVASULAR CARE, PLLC, GOOD CARE PHARAMCY, INC, CTO MANAGEMENT, LLC d/b/a HEALTH EAST AMULATORY SURGICAL CENTER, NEURO-PAIN CARE, PC, NORTHEAST ANESTHESIA AND PAIN MANAGEMENT, O AND P PLUS, LLC, ORTHOPAEDIC SPECIALIST OF GREATER NEW YORK, PC, READY MEDICAL SERVE, PC, SOUTH DEAN ORTHOPAEDICS, PLLC, URGENT MEDICAL CARE, PC, are not entitled to no-fault coverage for the motor vehicle accident that occurred on May 4, 2017,

involving individual defendant Mireides Hernandez Reyes, for claims submitted under American Transit insurance policy CS A213444, Claim No: 665970-03, as referenced in the complaint, and plaintiff American Transit has no duty to provide, pay, honor, or reimburse any claims in any current or future proceedings, including without limitation arbitrations and/or lawsuits, seeking to recover no-fault benefits arising out of the March 6, 2016 accident; and it is further

ORDERED that the remaining parties are to appear for a status conference on January 17, 2020 at 9:30 a.m at 71 Thomas Street, Courtroom 304.

DATED: 1-3 ²⁰²⁰ ~~2019~~,
New York, New York

ENTER:



MELISSA A. CRANE, J.S.C
HON. MELISSA CRANE

Check one: FINAL DISPOSITION ~~NON-FINAL DISPOSITION~~
Check if appropriate: MOTION IS: ~~GRANTED~~ DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT