

<b>American Tr. Ins. Co. v AAAMG Leasing Corp.</b>
2020 NY Slip Op 31811(U)
May 13, 2020
Supreme Court, New York County
Docket Number: 656901/2019
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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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

AAAMG LEASING CORP., AB MODERN ACUPUNCTURE PC, ADAGIO CHIROPRACTIC P.C., ATLAS PHARMACY LLC, BRIDGES PSYCHOLOGICAL SERVICES PC, COHEN & KRAMER, M.D., P.C., COLIN CLARKE MD, P.C., EXON MEDICAL EQUIPMENT INC, IZM PT, PC, KINETIC MOVE PHYSICAL THERAPY, PLLC, M & D ELITE PHARMACY LLC, METRO PAIN SPECIALISTS, P.C., METROPOLITAN MEDICAL AND SURGICAL, P.C., MILLENNIUM AMBULATORY SURGERY CENTER, LLC, NEW YORK PRESBYTERIAN HOSPITAL, RAPID IMAGING CORP, SUPPORTIVE PRODUCTS CORP

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for JUDGMENT - DEFAULT

In his declaratory judgment action, the plaintiff insurer moves pursuant to CPLR 3215 for leave to enter a default judgment against non-answering defendants AAAMG Leasing Corp., AB Modern Acupuncture PC, Atlas Pharmacy LLC, Cohen & Kramer M.D. PC, Adagio Chiropractic PC, Colin Clarke M.D. PC, IZM PT PC, Kinetic Move Physical Therapy PLLC, M&D Elite Pharmacy LLC, Metropolitan Medical and Surgical PC, New York Presbyterian Hospital and Supportive Products Corp. declaring that they are not entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on March 25, 2019, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defendants as assignees of nonparty Miguel Disney, alleged to

have been injured in the motor vehicle accident, and made claims under a policy issued to Gaiety Taxi under policy number MPH 8800716. No opposition is submitted.

The plaintiff's motion is granted inasmuch as it has provided proof of service of the summons and complaint upon the defendants, proof of the facts constituting the claim, and proof of the defendants' defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1<sup>st</sup> Dept. 2016]), timely moved 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 satisfied the notice requirements for this motion, as articulated in CPLR 3215(g). Having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

As to the facts constituting its claim, the plaintiff submitted proof to demonstrate, *prima facie*, that it properly denied coverage on the subject claims on the basis that it has a "founded belief" that the injuries for which Disney sought treatment did not arise from an insured event. See Central General Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997); Zappone v Home Ins. Co., 55 NY2d 131 (1982); Mount Sinai Hosp. v Triboro Council, 263 AD2d 11 (2<sup>nd</sup> Dept. 1999). This determination was made after an investigation by the plaintiff, outlined in the affidavit of Uriel McLeish, a claims specialist for the plaintiff, and the exhibits attached thereto. The exhibits include a police report in which the collision is described as a low-impact rear-end collision wherein the car's airbags did not deploy. The plaintiff's determination was also based upon a report by Omed Komari, PhD., a biomechanical engineer with Independent Engineering Consultants who analyzed the accident as reported by and found that Disney's complaints of spine pain or injury were inconsistent with this very low impact rear-end collision, and are more properly attributable to deterioration from everyday activities such as bending or lifting. Therefore, the plaintiff is entitled to a judgment declaring that the defaulting defendants are not entitled to no-fault benefits for the subject accident and claim.

As in this case, CPLR 3215(a) requires that when a default judgment is taken against fewer than all the defendants, the action is severed as against the remaining defendants. See Woodson v Mendon Leasing Corp., 259 AD2d 304 (1<sup>st</sup> Dept. 1999); see also Balanta v Stanline Taxi Corp., 307 AD2d 1017 (2<sup>nd</sup> Dept. 2003); Holt v Holt, 262 AD2d 530 (2<sup>nd</sup> Dept. 1999); Frolish v. Ryder Truck Rental, 63 AD2d 799 (3<sup>rd</sup> Dept. 1978). A judgment obtained by a plaintiff as against a defaulting defendant does not entitle the plaintiff to collateral estoppel against the non-defaulting defendants who would otherwise be denied a full and fair opportunity to litigate issues of liability. See Woodson v Mendon Leasing Corp., supra; Frolish v Ryder Truck Rental, supra.

Accordingly, it is,

ORDERED that the plaintiff's motion for leave to enter a default judgment pursuant to CPLR 3215 as against defendants AAAMG Leasing Corp., AB Modern Acupuncture PC, Atlas Pharmacy LLC, Cohen & Kramer M.D. PC, Adagio Chiropractic PC, Colin Clarke M.D. PC, IZM PT PC, Kinetic Move Physical Therapy PLLC, M&D Elite Pharmacy LLC, Metropolitan Medical and Surgical PC, New York Presbyterian Hospital and Supportive Products Corp., is granted, without opposition; and it is further,

ADJUDGED and DECLARED that AAAMG Leasing Corp., AB Modern Acupuncture PC, Atlas Pharmacy LLC, Cohen & Kramer M.D. PC, Adagio Chiropractic PC, Colin Clarke M.D. PC, IZM PT PC, Kinetic Move Physical Therapy PLLC, M&D Elite Pharmacy LLC, Metropolitan Medical and Surgical PC, New York Presbyterian Hospital and Supportive Products Corp. are not entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on March 25, 2019, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defaulting defendants as purported assignees of Miguel Disney under policy issued by the plaintiff to Gaiety Taxi under policy number MPH 8800716; and it is further,

ORDERED that the action is severed and continued as against the remaining defendants, Millennium Ambulatory Surgery Center LLC, Exon Medical Equipment Inc., Bridges Psychological Services PC, and Metro Pain Specialists PC; 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; and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

5/13/2020

DATE

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

CHECK ONE:

CASE DISPOSED  
 GRANTED

CASE DISPOSED  
GRANTED

DENIED

DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER

OTHER