

American Tr. Ins. Co. v Durzzaman
2020 NY Slip Op 32183(U)
July 6, 2020
Supreme Court, New York County
Docket Number: 154391/2019
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 -

MD SHAHI DURZZAMAN, ALLBODY HEALING SUPPLIES,
LLC, ALL COUNTY, LLC, BEST TOUCH PT
P.C., COMPREHENSIVE MEDICAL ASSIST P.C., CUSTOM
RX PHARMACY LLC, FIRST CLASS MEDICAL,
P.C., HEALTHPLUS SURGERY CENTER, LLC, HUDSON
REGIONAL HOSPITAL, L. DIWAN MD, LLC, MAURO
CHIROPRACTIC P.C., METRO PAIN SPECIALISTS
P.C., MOUNT SINAI MEDICAL SUPPLY INC, OBB
ACUPUNCTURE P.C., PREMIER ANESTHESIA
ASSOCIATES, PA, QUEENS ARTHROSCOPY AND
SPORTS MEDICINE, P.C., TITAN PHARMACY

Defendants.

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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, 19, 20

were read on this motion to/for JUDGMENT - DECLARATORY

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, 19, 20

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment action brought pursuant to article 51 of the Insurance Law,
the plaintiff moves (1) pursuant to CPLR 3215 for leave to enter a default judgment against the
defaulting defendants, individual defendant MD Shahidurzzaman, and health-care provider
defendants All County, LLC, Best Touch PT, P.C., Comprehensive Medical Assist P.C., First
Class Medical, P.C., Healthplus Surgery Center, LLC, Hudson Regional Hospital, L. Diwan,
M.D., LLC, Mauro Chiropractic, P.C., Metro Pain Specialists, P.C., OBB Acupuncture, P.C.,
Premier Anesthesia Associates, PA, Queens Arthroscopy and Sports Medicine, P.C. and Titan
Pharmacy. and (2) pursuant to CPLR 3212 for summary judgment as against the answering
defendants, Allbody Healing Supplies, Custom Rx Pharmacy LLC and Mount Sinai Medical
Supply, Inc. The plaintiff seeks a judgment declaring that it is not obligated to pay no-fault

DECISION + ORDER ON
MOTION

benefits to the individual defendant or the health-care defendants to reimburse them for medical supplies and/or treatment rendered to the individual defendant for injuries allegedly sustained in a motor vehicle accident. No opposition is submitted. The motion is granted in its entirety.

In his application for no-fault benefits, the individual defendant alleged, *inter alia*, that he was injured in a motor vehicle accident on August 3, 2018, on West 43rd Street in Manhattan. He thereafter obtained medical treatment or medical supplies from the health-care defendants. According to the plaintiff, the health-care defendants sought payment, as assignees of the individual defendant, for no-fault benefits under insurance policy number B704508, issued to Luiza Janashvili, and assigned claim number 1037105-01, to reimburse them for medical supplies and/or treatment rendered to the individual defendant for injuries allegedly sustained in the motor vehicle accident. That branch of the motion seeking relief pursuant to CPLR 3215 is granted inasmuch as the plaintiff 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 [1st Dept 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1st Dept 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

As to the facts constituting its claim in this action, the plaintiff submitted proof sufficient to demonstrate that the individual defendant failed to appear for two properly scheduled and noticed independent medical examinations (IMEs), thereby violating a condition precedent to coverage, and creating an absolute coverage defense See Insurance Law 5106(a); 11 NYCRR 65-1.1; Mapfre Ins. Co. of N.Y. v Manoo, 140 AD3d 468, 470 (1st Dept 2016); American Tr. Ins. Co. v Lucas, 111 AD3d 423, 424 (1st Dept 2013); Stephen Fogel Psychological, P.C. v Progressive Cas. Ins. Co., 35 AD3d 720 (2nd Dept 2006). The plaintiff's proof includes the summons and complaint, the subject policy, an affidavit of Cheryl Glaze, a claim representative for the plaintiff, an affidavit of Luis Campbell, the plaintiff's mail room supervisor, the denial of claim forms, two IME scheduling letters, proof of mailing of the notices to defendant Perez-Lopez and his counsel, and proof of MD Shahidurzzaman's failure to appear for the IMEs. The plaintiff also submits an affidavit of Dr. Michael Russ, the physician who was to perform the examinations, and an affidavit of Charles Campanelli of Signet Claim Solutions, who scheduled the IMEs and notified the individual defendant and the attorney identified in his application for benefits.

By this proof, the plaintiff establishes that the defaulting defendants are not entitled to no-fault benefits under article 51 of the Insurance Law, for the purported accident of August 3, 2018. Having failed to answer, the defaulting 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). Therefore, the plaintiff is entitled to a judgment so declaring.

The plaintiff’s request for relief under CPLR 3212 is also granted. It is well settled that the proponent of a motion for summary judgment establishes entitlement to that relief by tendering sufficient evidence to demonstrate the absence of triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. See id., citing Alvarez v Prospect Hosp., 68 NY2d 320 (1986). The plaintiff has met this burden as against the answering defendants with the proof detailed above. By failing to oppose the motion, those defendants failed to raise any triable issue of fact.

Accordingly, it is

ORDERED that the plaintiff’s motion (1) for leave to enter a default judgment pursuant to CPLR 3215 for leave to enter a default judgment against the defaulting defendants, individual defendant MD Shahidurzzaman, and health-care provider defendants All County, LLC, Best Touch PT, P.C., Comprehensive Medical Assist P.C., First Class Medical, P.C., Healthplus Surgery Center, LLC, Hudson Regional Hospital, L. Diwan, M.D., LLC, Mauro Chiropractic, P.C., Metro Pain Specialists, P.C., OBB Acupuncture, P.C., Premier Anesthesia Associates, PA, Queens Arthroscopy and Sports Medicine, P.C. and Titan Pharmacy. and (2) pursuant to CPLR 3212 for summary judgment as against the answering defendants, Allbody Healing Supplies, Custom Rx Pharmacy LLC and Mount Sinai Medical Supply, Inc., is granted in its entirety, without opposition; and it is further,

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to individual defendant MD Shahidurzzaman, and health-care provider defendants All County, LLC, Best Touch PT, P.C., Comprehensive Medical Assist P.C., First Class Medical, P.C., Healthplus Surgery Center, LLC, Hudson Regional Hospital, L. Diwan, M.D., LLC, Mauro

Chiropractic, P.C., Metro Pain Specialists, P.C., OBB Acupuncture, P.C., Premier Anesthesia Associates, PA, Queens Arthroscopy and Sports Medicine, P.C., Titan Pharmacy, Allbody Healing Supplies, Custom Rx Pharmacy LLC and Mount Sinai Medical Supply, Inc. for medical supplies and/or treatment rendered to defendant MD Shahidurzzaman for injuries allegedly sustained in the August 3, 2018, motor vehicle accident, claimed under insurance policy number B704508, issued to Luiza Janashvili, and assigned claim number 1037105-01, and it is further,

ORDERED that the Clerk shall enter judgment accordingly

This constitutes the Decision, Order, and Judgment of the court.

7/6/2020
DATE


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

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