

American Tr. Ins. Co. v Reyes
2020 NY Slip Op 33018(U)
September 14, 2020
Supreme Court, New York County
Docket Number: 158483/2019
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,

INDEX NO. 158483/2019
MOTION DATE 09/14/2020
MOTION SEQ. NO. 001

- v -

VERONICA REYES, BLISS ACUPUNCTURE P.C.,BS
KINGS COUNTY MEDICAL P.C.,CITIMEDICAL I,
PLLC,COMFORT PHYSICAL THERAPY, PLLC,DURAMED
INC, DYNAMIC SUPPLIERS LLC,FRANKLIN RX INC,
GALMAR DIAGNOSTIC MEDICAL, P.C.,MEDICAL
RECORDS RETRIEVAL INC.,METRO PAIN SPECIALISTS
P.C.,MMA PHYSICAL THERAPY, P.C.,NEW YORK
SPORTS AND JOINTS ORTHOPAEDIC SPECIALISTS
PLLC,REHAB CARE PHYSICAL THERAPY
P.C.,SIGNIFICANT CARE PT, P.C.,STILLWELL
CHIROPRACTIC P.C.,SURGICORE SURGICAL CENTER,
LLC,SUTPHIN SUPPLY INC, WELLMART RX, INC

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for JUDGMENT - DECLARATORY

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
defendants, VERONICA REYES, BLISS ACUPUNCTURE P.C.,BS KINGS COUNTY MEDICAL P.C.,
COMFORT PHYSICAL THERAPY, PLLC,DURAMED INC, DYNAMIC SUPPLIERS LLC, , GALMAR
DIAGNOSTIC MEDICAL, P.C.,MEDICAL RECORDS RETRIEVAL INC.,REHAB CARE PHYSICAL
THERAPY P.C., STILLWELL CHIROPRACTIC P.C., and SUTPHIN SUPPLY INC, and (2) pursuant to
CPLR 3212 for summary judgment as against defendant FRANKLIN RX INC . The plaintiff seeks
a judgment declaring that it is not obligated to pay no-fault 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. The action
was discontinued as against the remaining named defendants. No opposition is submitted. The
motion is granted.

In her application for no-fault benefits, the individual defendant alleged, *inter alia*, that she suffered “multiple injuries” in a motor vehicle accident on March 15, 2018, in Woodhaven, N.Y., while a passenger in a vehicle insured by the plaintiff. She 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 CAP612713, and assigned claim number 1023359-05, 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, 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 Reyes and her counsel, identified in her application for benefits, and proof of Reyes’ failure to appear for the IMEs. The plaintiff also submits an affidavit of Brian Wolin, DC, and Robert Snitkoff, DC, the chiropractors who were to perform the examinations, and an affidavit of Tracy Simpson of Examworks, Inc. who scheduled the IMEs and notified Reyes at the address he provided in her application for benefits and her attorney.

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 injuries allegedly sustained by

defendant Reyes in a motor vehicle accident on March 15, 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 defendant Franklin RX, Inc., which answered the complaint, with the proof detailed above. By failing to oppose the motion, defendant Franklin RX, Inc. has 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 against defendants VERONICA REYES, BLISS ACUPUNCTURE P.C., BS KINGS COUNTY MEDICAL P.C., COMFORT PHYSICAL THERAPY, PLLC, DURAMED INC, DYNAMIC SUPPLIERS LLC, , GALMAR DIAGNOSTIC MEDICAL, P.C., MEDICAL RECORDS RETRIEVAL INC., REHAB CARE PHYSICAL THERAPY P.C., STILLWELL CHIROPRACTIC P.C., and SUTPHIN SUPPLY INC, and (2) pursuant to CPLR 3212 for summary judgment as against defendant FRANKLIN RX, 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 VERONICA REYES and healthcare defendants BLISS ACUPUNCTURE P.C., BS KINGS COUNTY MEDICAL P.C., COMFORT PHYSICAL THERAPY, PLLC, DURAMED INC, DYNAMIC SUPPLIERS LLC, , GALMAR DIAGNOSTIC MEDICAL, P.C., MEDICAL RECORDS RETRIEVAL INC., REHAB CARE PHYSICAL THERAPY P.C., STILLWELL CHIROPRACTIC P.C., SUTPHIN SUPPLY INC, and FRANKLIN RX, INC., for medical supplies and/or treatment rendered to defendant Veronica Reyes for injuries allegedly sustained in the March 15, 2018, motor vehicle accident, claimed under insurance policy number CAP612713, and assigned claim number 1023359-05, and it is further,

ORDERED that the Clerk shall enter judgment accordingly

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



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

9/14/2020
 DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE