

American Tr. Ins. Co. v Singh
2020 NY Slip Op 33326(U)
October 8, 2020
Supreme Court, New York County
Docket Number: 162153/2018
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE **PART** **IAS MOTION 63M**

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

RAJINDER SINGH, ATLAS PHARMACY LLC,
CITIMEDICAL I, PLLC, ENGLINTON MEDICAL,
P.C., EXCELL CLINICAL LAB, INC., LOMIS
ACUPUNCTURE P.C., PHOENIX MEDICAL SERVICES,
P.C.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19

were read on this motion to/for JUDGMENT – DEFAULT AND SUMMARY.

Upon the foregoing documents, the motion is decided as follows:

Plaintiff American Transit Insurance Company (“ATIC”) commenced this action by filing of a summons and complaint on December 27, 2018. On February 13, 2019, Excell Clinical Lab, Inc was served pursuant to CPLR 311. On February 19, 2019, defendants, Phoenix Medical Services, P.C., Lomis Acupuncture P.C., Englington Medical, P.C, were served pursuant to BCL 306 and defendants Citimedical I, PLLC, and Atlas Pharmacy, LLC, were served pursuant to LLC Law 303. On April 20, 2019, Rajinder Singh was served pursuant to CPLR 308(4). The sole answering defendant, Atlas Pharmacy, LLC interposed an Answer on June 7, 2019. The remaining defendants have failed to answer the summons and complaint. On January 9, 2020, the non-answering defendants were mailed an additional copy of the summons and complaint pursuant to CPLR 3215(g). As such, said defendants are now in default.

Plaintiff now seeks a default judgment against the non-answering defendants and summary judgment against the answering defendant, granting plaintiff a declaratory judgment that Rajinder Singh is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy BC404977, Claim No.: 1026133-01, granting ATIC a declaratory judgment that ATIC is not obligated to honor or pay claims for reimbursement submitted by the medical providers named herein, as assignees of Rajinder Singh, under ATIC insurance policy BC404977, Claim No.: 1026133-01, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy BC404977, Claim No.: 1026133-01 from the alleged accident of March 24, 2018, involving Singh as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; a declaratory judgment that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy BC404977, Claim No.: 1026133-01, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy BC404977, Claim No.: 1026133-01 from the alleged accident of March 24, 2018, involving Singh as Singh is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d

395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957). To establish entitlement to a default judgment see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept 1997]; *Rafiq v. Weston*, 171 AD2d 783 [2nd Dept 1991]; *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]).

In support of its motion, plaintiff submits the affidavits of Walter Distler, an employee of Comprehensive Medical Reviews, LLC, who schedules IME appointments on behalf of plaintiff, the affirmation of Magda Fahmy, the doctor assigned to conduct said IMEs, the affidavit of Iris Hernandez, a claims representative employed by plaintiff and the affidavit of Luis Campbell, plaintiff's mail room supervisor, together with the relevant insurance policy and supporting documents, which establish as follows: On March 24, 2018, a vehicle owned by the insured Rajinder Singh was involved in a motor vehicle accident. Singh was a passenger in the vehicle and made a claim to ATIC, as a purported eligible injured person of the above-referenced insurance policy, to the plaintiff under claim # 1026133-01. Arising from the accident, Singh made no-fault

insurance claims with ATIC and assigned his benefits to various medical providers, who submitted claims to ATIC seeking reimbursement. Plaintiff mailed letters to Singh and his attorney scheduling an IME with Dr. Fahmy on July 11, 2018, July 25, 2018 and August 15, 2018. The first IME was rescheduled and Singh failed to appear at the two later IMEs. Based upon Singh's failure to attend the scheduled IMEs, he has breached a condition precedent to insurance coverage and based upon same, plaintiff mailed general denials to the no-fault claimants on August 23, 2018. As such, plaintiff has established an entitlement to a default judgment against the non-answering defendants and summary judgment against Atlas Pharmacy, LLC. Accordingly, it is hereby:

ORDERED that Rajinder Singh is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy BC404977, Claim No.: 1026133-01; and it is further

ORDERED that ATIC is not obligated to honor or pay claims for reimbursement submitted by the medical providers named herein, as assignees of Rajinder Singh, under ATIC insurance policy BC404977, Claim No.: 1026133-01, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy BC404977, Claim No.: 1026133-01 from the alleged accident of March 24, 2018, involving Singh as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ORDERED that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy BC404977, Claim No.: 1026133-01, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC

insurance policy BC404977, Claim No.: 1026133-01 from the alleged accident of March 24, 2018, involving Singh as Singh is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.



10/8/2020
DATE

LAURENCE L. LOVE, J.S.C.

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