

American Tr. Ins. Co. v Amazing Anesthesia

2020 NY Slip Op 33375(U)

October 15, 2020

Supreme Court, New York County

Docket Number: 152462/2020

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff,

- v -

AMAZING ANESTHESIA, ATLAS PHARMACY LLC., BACK TO BALANCE ACUPUNCTURE PC, CROSSTOWN MEDICAL PC, DM CHIROPRACTIC PC, INJURY CARE CHIRO PC, LIFE CARE PHYSICAL THERAPY PC, LONGEVITY MEDICAL SUPPLY INC, MAXIMUM WELLNESS CHIROPRACTIC PC, NORTHERN BRONX PT P.C., PL ACUPUNCTURE PC, RAPID IMAGING CORP, RIDGEWOOD DIAGNOSTIC LABORATORY LLC, ROXBURY ANESTHESIA, LLC., SURGICORE OF JERSEY CITY LLC and TREMONT MEDICAL SERVICES PC,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 46, 49, 50

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion of plaintiff American Transit Insurance Company ("Plaintiff") for entry of a default judgment against defendants Atlas Pharmacy, LLC, Maximum Wellness Chiropractic PC, Northern Bronx PT, P.C., PL Acupuncture PC, Roxbury Anesthesia, LLC, and Surgicore of Jersey City LLC (together, "Defendants") is granted on default and without opposition, in accord with the following memorandum decision.¹

Background

Plaintiff is the issuer of an insurance policy issued to non-party Day & Night

¹ Plaintiff's motion was also made against defendants Injury Care Chiro PC, Life Care Physical Therapy PC, Longevity Medical Supply Inc., Amazing Anesthesia, Back to Balance Acupuncture PC, DM Chiropractic PC, Rapid Imaging Corp., Crosstown Medical PC, Ridgewood Diagnostic Laboratory LLC, and Tremont Medical, but was later withdrawn against these Defendants.

Transportation (the “Policy”) under which non-party Roselie Luctamar (“Luctamar”) made claims for no-fault benefits in connection with an alleged motor vehicle collision on September 13, 2019 (the “collision”). The Defendants are medical providers who have made claims to Plaintiff as assignees of Luctamar. Plaintiff commenced this action seeking declaratory and injunctive relief against Defendants declaring that they are not entitled to no-fault insurance benefits in connection with the collision on the basis of a founded belief that the alleged injuries were not sustained as a result of a covered event. Plaintiff now moves for entry of a default judgment against the Defendants, who have failed to answer the complaint or otherwise appear in this action; and the motion is unopposed.

Discussion

Plaintiff has demonstrated its entitlement to the entry of a default judgment against Defendants by submission of the affirmation of its counsel, William Larkin, Esq., with exhibits thereto, and the affidavit of Uriel McLeish, a claim representative with Plaintiff, with exhibits thereto, which demonstrate proof of service of the summons and complaint upon the Defendants, proof of the facts constituting the claim, and proof of the Defendant’s defaults (CPLR 3215[f]). Plaintiff has also timely moved for relief within one year of the default as required by CPLR 3215 (c) and satisfied the additional notice requirements required by CPLR 3215 (g). Having failed to answer, Defendants are “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]).

An insurer “[m]ay assert a lack of coverage defense premised on the fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). To establish its entitlement to a default

judgment based on a founded belief, a no-fault insurer is “not required to establish that the subject collision was the product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence” (*V.S. Med. Servs. P.C. v All State Ins. Co.*, 25 Misc 3d 39, 41 [App Term, 2d Dept 2009]; *see also Kemper Independence Ins. Co. v Caban Massage Therapy P.C.*, 2019 NY Slip OP 33478[U] [Sup Ct, NY County 2019]). Rather, the insurer must demonstrate the facts elicited during an investigation that make up the founded belief. “Circumstantial evidence may be used to prove such facts if a party’s conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence” (*Unitrin Advantage Ins. Co. v Advanced Orthopedics and Joint Preservation, P.C.*, 2018 N.Y. Slip Op. 33296 [U], *quoting Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005] [internal quotations omitted]). Here, by submission of the affidavit of Uriel McLeish, and exhibits thereto, Plaintiff sets forth facts sufficient to demonstrate that it has a founded belief that Luctamar was not injured in the subject collision and is, therefore, not entitled to coverage under the Policy. Accordingly, Plaintiff is entitled to entry of a default judgment and declaration that it is not required to pay Defendants’ claims.

Accordingly, it is

ORDERED that plaintiff American Transit Insurance Company’s motion for entry of a default judgment against defendants Atlas Pharmacy, LLC, Maximum Wellness Chiropractic PC, Northern Bronx PT, P.C., PL Acupuncture PC, Roxbury Anesthesia, LLC, and Surgicore of Jersey City LLC is granted; and it is

ORDERED, ADJUDGED and DECLARED, that defendants Atlas Pharmacy, LLC, Maximum Wellness Chiropractic PC, Northern Bronx PT, P.C., PL Acupuncture PC, Roxbury Anesthesia, LLC, and Surgicore of Jersey City LLC are not entitled to no-fault benefits as a

result of a motor vehicle accident involving Roselie Luctamar and under the insurance policy issued to Day & Night Transportation with policy number CAP616261 for the motor vehicle accident that occurred on September 13, 2019.

Louis L. Nock

10/15/2020
DATE

LOUIS L. NOCK, 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