

American Tr. Ins. Co. v Vasquez
2021 NY Slip Op 30993(U)
March 30, 2021
Supreme Court, New York County
Docket Number: 156163/2019
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

LAURA VASQUEZ, ADVANCED COMPREHENSIVE LABORATORY, ALLBODY HEALING SUPPLIES LLC, BIBIMED INC, CITIMED SERVICES PA, CITIMEDICAL I, PLLC, CONTEMPORARY DIAGNOSTIC IMAGING, LLC, HEALTHPLUS SURGERY CENTER, LLC, NJMHMC, METROPOLITAN SURGICAL SERVICES LLC, MIISUPPLY LLC, OPTIMUM HEALTH ACUPUNCTURE, P.C., PREMIER ANESTHESIA ASSOCIATES, PA, SMK PHARMACY, CORP

Defendant.

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INDEX NO. 156163/2019
MOTION DATE 10/23/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DECLARATORY

Upon the foregoing documents and for the reasons set forth hereinbelow, plaintiff's instant motion for a declaratory judgment on default is granted in part, on the merits and on default, and denied in part, solely as moot, for the reasons stated hereinbelow.

Background

On September 18, 2018, the claimant-defendant, Laura Vasquez, was allegedly injured in a motor vehicle accident and submitted a claim (#1039851-03) to plaintiff, American Transit Insurance Company, as a purported eligible injured person under plaintiff's subject insurance policy (# BC 610246).

The claimant-defendant then sought medical treatment, services and/or products from the medical provider defendants, namely, Advanced Comprehensive Laboratory; Allbody Healing Supplies LLC; Bibimed Inc; Citimed Services PA; Citimedical I, PLLC; Contemporary; Diagnostic Imaging, LLC; Healthplus Surgery Center, LLC; NJMHMC d/b/a Hudson Regional Hospital; Metropolitan Surgical Services LLC; MIISupply LLC; Optimum Health Acupuncture, P.C.; Premier Anesthesia Associates, PA; and SMK Pharmacy, Corp. d/b/a Natures First LTC. The claimant-defendant assigned her right to collect No-Fault benefits to the medical provider

defendants, who then submitted No-Fault claims for reimbursement to plaintiff. On December 20, 2018 and January 17, 2019, the claimant-defendant failed to appear for a scheduled and rescheduled Independent Medical Examination (“IME”), thus breaching a condition of plaintiff’s subject insurance policy. Thus, plaintiff disclaimed coverage. (NYSCEF Doc. 1.)

On June 18, 2019, plaintiff commenced the instant action, seeking a judgment (1) declaring that the claimant-defendant breached a condition of plaintiff’s subject insurance policy, and, therefore, (2) declaring that all defendants are not entitled to No-Fault coverage, first-party coverage, and/or first-party No-Fault benefits from plaintiff arising out of the subject alleged accident; and (3) awarding costs and disbursements to plaintiff (NYSCEF Doc. 1, at 11-12).

Pursuant to a July 9, 2019 stipulation, plaintiff discontinued the instant action, with prejudice, as against medical provider defendants Advanced Comprehensive Laboratory and NJMHMC d/b/a Hudson Regional Hospital, only (NYSCEF Doc. 2).

On July 22, 2020, medical provider defendant MIISupply LLC (untimely) answered the instant complaint with various admissions, denials, and nine Affirmative Defenses (NYSCEF Doc. 5).

Plaintiff now moves (1) pursuant to CPLR 3215, for a default judgment against the claimant-defendant and medical provider defendants Advanced Comprehensive Laboratory; Allbody Healing Supplies LLC; Bibimed Inc; Citimed Services PA; Citimedical I, PLLC; Contemporary; Diagnostic Imaging, LLC; Healthplus Surgery Center, LLC; NJMHMC d/b/a Hudson Regional Hospital; Metropolitan Surgical Services LLC; MIISupply LLC; Optimum Health Acupuncture, P.C.; Premier Anesthesia Associates, PA; and SMK Pharmacy, Corp. d/b/a Natures First LTC; (2) for a judgment declaring that the claimant-defendant is not an eligible injured person entitled to No-Fault benefits arising out of the subject alleged accident, under plaintiff’s subject insurance policy; (3) for a judgment declaring that plaintiff is not obligated to honor or pay current and/or future claims for reimbursement that the aforementioned medical provider defendants, in their capacities as the claimant-defendant’s assignees, submitted or submit to plaintiff, arising out of the subject alleged accident, as the claimant-defendant is not an eligible injured person; and (4) for a judgment declaring that plaintiff is not required to provide, pay, or honor current and/or future claims for No-Fault benefits under the Mandatory Personal Injury Protection Endorsement under plaintiff’s subject insurance policy that the aforementioned defendants submitted or submit to plaintiff, arising out of the subject alleged accident (NYSCEF Doc. 8). Plaintiff is not moving as against medical provider defendants Advanced Comprehensive Laboratory and NJMHMC d/b/a Hudson Regional Hospital, only, pursuant to the aforementioned stipulation of discontinuance (NYSCEF Doc. 2).

Discussion

Plaintiff has established that it is entitled to a default judgment against the claimant-defendant and medical provider defendants Allbody Healing Supplies LLC; Bibimed Inc; Citimed Services PA; Citimedical I, PLLC; Contemporary; Diagnostic Imaging, LLC; Healthplus Surgery Center, LLC; Metropolitan Surgical Services LLC; MIISupply LLC; Optimum Health Acupuncture, P.C.; Premier Anesthesia Associates, PA; and SMK Pharmacy, Corp. d/b/a Natures First LTC (“the defaulting defendants”) by complying with CPLR 3215(f) and (g) by submitting the

following, among other documents: copies of the subject pleadings (NYSCEF Doc. 16); copies of the subject affidavits of service and CPLR 3215(g) notice (NYSCEF Documents 17 and 18); and the affidavit of facts of Cheryl Glaze, a No-Fault Claims Supervisor for plaintiff (NYSCEF Doc. 11).

To date, the defaulting defendants have failed to answer the instant complaint timely and/or oppose or otherwise respond to the instant motion, and their time to do so has expired.

Therefore, pursuant to CPLR 3215, plaintiff is entitled to a default judgment as against the claimant-defendant and medical provider defendants Allbody Healing Supplies LLC; Bibimed Inc; Citimed Services PA; Citimedical I, PLLC; Contemporary; Diagnostic Imaging, LLC; Healthplus Surgery Center, LLC; Metropolitan Surgical Services LLC; MIISupply LLC; Optimum Health Acupuncture, P.C.; Premier Anesthesia Associates, PA; and SMK Pharmacy, Corp. d/b/a Natures First LTC.

Plaintiff is not entitled to a default judgment as against medical provider defendants Advanced Comprehensive Laboratory and NJMHMC d/b/a Hudson Regional Hospital, pursuant to the aforementioned stipulation of discontinuance (NYSCEF Doc. 2).

Conclusion

Thus, for the reasons stated hereinabove, the instant motion by plaintiff, American Transit Insurance Company, pursuant to CPLR 3215, for a default judgment is hereby granted, on the merits and on default, as against the claimant defendant, Laura Vasquez, and medical provider defendants Allbody Healing Supplies LLC; Bibimed Inc; Citimed Services PA; Citimedical I, PLLC; Contemporary; Diagnostic Imaging, LLC; Healthplus Surgery Center, LLC; Metropolitan Surgical Services LLC; MIISupply LLC; Optimum Health Acupuncture, P.C.; Premier Anesthesia Associates, PA; and SMK Pharmacy, Corp. d/b/a Natures First LTC. (“the defaulting defendants”), and is hereby denied as against medical provider defendants Advanced Comprehensive Laboratory and NJMHMC d/b/a Hudson Regional Hospital, solely as moot pursuant to the July 9, 2019 stipulation of discontinuance as against those two medical provider defendants (NYSCEF Doc. 2).

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that the claimant-defendant breached a condition of plaintiff’s subject insurance policy (# BC 610246); (2) declaring that the defaulting defendants are not entitled to No-Fault coverage, first-party coverage, and/or first-party No-Fault benefits from plaintiff arising out of the alleged September 18, 2018 accident; (3) declaring that the claimant-defendant is not an eligible injured person entitled to No-Fault benefits, arising out of the alleged September 18, 2018 accident, under plaintiff’s subject insurance policy; (4) declaring that plaintiff is not obligated to honor or pay current and/or future claims for reimbursement that the defaulting medical provider defendants, in their capacities as the claimant-defendant’s assignees, submitted or submit to plaintiff, arising out of the alleged September 18, 2018 accident, as the claimant-defendant is not an eligible injured person; (5) declaring that plaintiff is not required to provide, pay, or honor current and/or future claims for No-Fault benefits under the Mandatory Personal Injury Protection Endorsement under plaintiff’s subject insurance policy that the defaulting defendants submitted or submit to

plaintiff, arising out of the alleged September 18, 2018 accident; and (6) awarding costs and disbursements to plaintiff.

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3/30/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: