

American Tr. Ins. Co. v Albis
2021 NY Slip Op 31773(U)
May 25, 2021
Supreme Court, New York County
Docket Number: 656455/2018
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, A
SUBSIDIARY OF AMERICAN T, INC.,

Plaintiff,

INDEX NO. 656455/2018MOTION DATE 03/17/2021MOTION SEQ. NO. 006

- v -

PETER D. ALBIS, DC, REUVEN ALON AKA ROB ALON,
 DIANA BEYNIN, DC, NACHMY BRONSTEIN, DC, RONALD
 A. HAYEK, DC, MARK HEYLIGERS, DC, TODD KOPPEL,
 MD, MARGARITA MOSHE, REGINA MOSHE AKA REGINA
 LEVIYEV, MD, YAN MOSHE AKA YAN LEVIYEV,
 RAMKUMAR PANHANI, MD, DIPTI R. PATEL, DC, LEONID
 SHAPIRO, MD, ADVANCED SPINAL CARE
 REHABILITATION, PA, ALBIS CHIROPRACTIC CARE, PC,
 AXIS CHIROPRACTIC CARE, PC, CITIMED SERVICES,
 PA, CITIMEDICAL I, PLLC, COLUMBUS IMAGING
 CENTER, LLC, DRUGS R US PHARMACY, INC,
 HACKENSACK SPECIALITY ASC L.L.C. F/K/A DYNAMIC
 SURGERY CENTER, LLC, DYNASTY MEDICAL CARE,
 PC, EXCEL SURGERY CENTER, LLC, INTEGRATED
 SPECIALTY ASC, L.L.C. F/K/A HEALTHPLUS SURGERY
 CENTER L.L.C., MEDAID RADIOLOGY, L.L.C., GARDEN
 STATE PAIN MANAGEMENT, PA, METRO PAIN
 SPECIALISTS PROFESSIONAL CORPORATION,
 PREMIER HEALTH CHOICE CHIROPRACTIC, PC, UNION
 WELLNESS CENTER, LLC, JOHN DOES 1-3, ABC CORPS
 1-3

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 211, 212, 213, 214,
 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235,
 236, 237, 238, 239

were read on this motion to/for

INJUNCTION/RESTRAINING ORDER.

In this action stating claims sounding in fraud, violation of New York General Business Law (GBL) § 349, violation of New York Public Health Law (PHL) § 238-a, and unjust enrichment, and seeking declaratory relief, the plaintiff moves pursuant to CPLR 6301 for a preliminary injunction (1) enjoining the defendants from prosecuting further all pending arbitration proceedings or litigations to collect insurance proceeds against the plaintiff, (2) staying all such pending arbitration proceedings and litigation that are already pending against the plaintiff, and (3) enjoining the defendants from bringing any new arbitration or litigation to

collect insurance proceeds against the plaintiff. Defendants Metro Pain Specialists Professional Corporation, Reuven Alon a/k/a Rob Alon, Regina Moshe a/k/a Regina Leviyev, M.D., Yan Moshe a/k/a Yan Leviyev, CitiMed Services, P.A., CitiMedical I, P.L.L.C., Columbus Imaging Center, L.L.C., Hackensack Specialty ASC, L.L.C. f/k/a Dynamic Surgery Center, L.L.C., Excel Surgery Center, L.L.C., Integrated Specialty ASC, L.L.C. f/k/a Healthplus Surgery Center L.L.C., and Medaid Radiology, L.L.C. oppose the motion. The motion is granted.

As a preliminary matter, by stipulation filed May 5, 2021, the plaintiff discontinued this action as against defendants Margarita Moshe and Drugs R Us Pharmacy, Inc., with prejudice and without costs. Accordingly, the plaintiff's application is deemed withdrawn as against those defendants only. The action was previously discontinued as against defendants Dipti R. Patel, DC, Mark Heyligers, D.C., Nachmy Bronstein, D.C., Ramkumar Panhani, M.D., Dynasty Medical Care, P.C., Union Wellness Center, LLC, Ronald A. Hayek, D.C., Todd Koppel, Garden State Pain Management, P.A., Peter D. Albis, D.C., Advanced Spinal Care Rehabilitation, PA, Albis Chiropractic Care, P.C., Premier Health Choice Chiropractic, P.C., and Diana Beynin, D.C., by stipulations dated June 20, 2019, December 30, 2019, December 23, 2019, December 27, 2019, and April 14, 2020, respectively.

To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if a preliminary injunction is not granted, and (3) a balance of equities in his or her favor. See CPLR 6301; Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Doe v Axelrod, 73 NY2d 748, 750 (1988). "Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief." Mar v Liquid Mgmt. partners, LLC, 62 AD3d 762, 763 (2nd Dept. 2009); see Meissner v Yun, 126 AD3d 565 (1st Dept. 2015); Zodkevitch v Feibush, 49 AD3d 424 (1st Dept. 2008).

For a summary of the allegations on which this action is premised, the court refers to the factual recitation contained in its decision and order dated May 4, 2020. Briefly, the plaintiff alleges that the defendants are financially-related individuals and entities engaged in a complex no-fault insurance fraud scheme, whereby they referred patients to one another in order to profit from such referrals rather than for reasons related to the medical needs of the patients involved. Pursuant to the amended complaint, filed on July 6, 2020, the plaintiff seeks \$3,124,337.46 in damages sustained as a result of the defendants' alleged fraudulent practices and violations of GBL § 349, \$100,000.00 in damages sustained as a result of violations of PHL §238-a by defendants Regina Moshe a/k/a Regina Leviyev, M.D., CitiMedical I, P.L.L.C., Columbus Imaging Center, L.L.C., and Medaid Radiology, L.L.C., punitive damages, and declaratory relief.

The plaintiff's submissions, including, *inter alia*, the 150-page amended complaint and an affidavit of Cheryl Glaze, the plaintiff's No-Fault Manager, establish a likelihood of success on at least some of its claims. The plaintiff provides comprehensive and detailed factual allegations describing the defendants' fraudulent scheme, including, *inter alia*, regulatory violations, unnecessary medical services, and unlawful referrals. The plaintiff also points to thousands of pending arbitrations and lawsuits against the plaintiff representing the defendants'

attempts to obtain millions in reimbursement for fees arising out of the alleged fraudulent scheme. The plaintiff's participation in such arbitrations and lawsuits, the propriety of which are the subject of this action, would unfairly require the plaintiff to litigate the same issue thousands of times and risk inconsistent results. Thus, the plaintiff also demonstrates a likelihood that it may sustain damages or injury not fully compensable by a monetary award in the absence of injunctive relief. Finally, in light of the foregoing and for the additional reasons described in the plaintiff's submissions, the balance of the equities tips in the plaintiff's favor.

Accordingly, it is

ORDERED that the plaintiff's motion pursuant to CPLR 6301 for a preliminary injunction is granted; and it is further

ORDERED that defendants Reuven Alon a/k/a Rob Alon, Regina Moshe a/k/a Regina Leviyev, M.D., Yan Moshe a/k/a Yan Leviyev, Leonid Shapiro, M.D., CitiMed Services, P.A., CitiMedical I, P.L.L.C., Columbus Imaging Center, L.L.C., Hackensack Specialty ASC, L.L.C. f/k/a Dynamic Surgery Center, L.L.C., Excel Surgery Center, L.L.C., Integrated Specialty ASC, L.L.C. f/k/a Healthplus Surgery Center L.L.C., Medaid Radiology, L.L.C., and Metro Pain Specialists Professional Corporation are hereby enjoined from prosecuting further all pending arbitration proceedings or litigation to collect insurance proceeds against the plaintiff, pending a final determination in this action; and it is further

ORDERED all currently pending arbitration proceedings and litigation to collect insurance proceeds from the plaintiff commenced by defendants Reuven Alon a/k/a Rob Alon, Regina Moshe a/k/a Regina Leviyev, M.D., Yan Moshe a/k/a Yan Leviyev, Leonid Shapiro, M.D., CitiMed Services, P.A., CitiMedical I, P.L.L.C., Columbus Imaging Center, L.L.C., Hackensack Specialty ASC, L.L.C. f/k/a Dynamic Surgery Center, L.L.C., Excel Surgery Center, L.L.C., Integrated Specialty ASC, L.L.C. f/k/a Healthplus Surgery Center L.L.C., Medaid Radiology, L.L.C., and Metro Pain Specialists Professional Corporation are hereby stayed, pending a final determination in this action; and it is further

ORDERED that defendants Reuven Alon a/k/a Rob Alon, Regina Moshe a/k/a Regina Leviyev, M.D., Yan Moshe a/k/a Yan Leviyev, Leonid Shapiro, M.D., CitiMed Services, P.A., CitiMedical I, P.L.L.C., Columbus Imaging Center, L.L.C., Hackensack Specialty ASC, L.L.C. f/k/a Dynamic Surgery Center, L.L.C., Excel Surgery Center, L.L.C., Integrated Specialty ASC, L.L.C. f/k/a Healthplus Surgery Center L.L.C., Medaid Radiology, L.L.C., and Metro Pain Specialists Professional Corporation are hereby enjoined from commencing any new arbitration or litigation to collect insurance proceeds against the plaintiff, pending a final determination in this action; and it is further

ORDERED that the parties shall appear for a status conference, to be held via Microsoft Teams, on August 5, 2021, at 11:30 a.m.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

5/25/2021

DATE

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

☐

REFERENCE