

American Tr. Ins. Co. v Frias
2022 NY Slip Op 30915(U)
March 16, 2022
Supreme Court, New York County
Docket Number: Index No. 161129/2020
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

JORDAN FRIAS, ASC OF ROCKAWAY BEACH, ASTRO
MEDICAL SERVICES, BP DYNAMIC REHAB PT
P.C., BRIDGEWATER CHIROPRACTIC P.C., BRUNO
MEDICAL SUPPLY INC., GREENLEAF CHEMISTS INC,
INJE PHYSICAL THERAPY P.C., JAMES MIHALCIK MD
PLLC, LONGEVITY MEDICAL SUPPLY, INC., MACINTOSH
MEDICAL, P.C., MEDAID RADIOLOGY LLC, NILE REHAB
PHYSICAL THERAPY, P.C., OLGA GIBBONS,
RIDGEWOOD DIAGNOSTIC LABORATORY
LLC, SCARBOROUGH CHIROPRACTIC P.C., SEDATION
VACATION PERIOPERATIVE MEDICINE PLLC, VITAL
POINTS ACUPUNCTURE P.C.

Defendant.

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INDEX NO. 161129/2020
MOTION DATE 02/25/2022,
02/25/2022
MOTION SEQ. NO. 001 001

**DECISION + ORDER ON
MOTION**

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, 23

were read on this motion to/for

JUDGMENT - DECLARATORY

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, 23

were read on this motion to/for

JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on December 2, 2019, wherein Jordan Frias (JF) was allegedly injured while driving a vehicle insured by plaintiff. JF filed a claim with plaintiff as a purported injured person under an insurance policy, number CAP608040, issued by plaintiff.

Plaintiff commenced this action seeking a declaratory judgment against JF, ASC of Rockaway Beach, Astro Medical Services, BP Dynamic Rehab Pt P.C., Bridgewater

Chiropractic P.C., Bruno Medical Supply Inc., Greenleaf Chemists Inc, INJE Physical Therapy P.C., James Mihalcik Md PLLC; Longevity Medical Supply, Inc., Macintosh Medical, P.C., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Olga Gibbons, Ridgewood Diagnostic Laboratory LLC, Scarborough Chiropractic P.C., Sedation Vacation Perioperative Medicine PLLC, and Vital Points Acupuncture P.C. finding that plaintiff is not liable to pay no-fault benefits to the medical provider defendants for medical services allegedly provided to JF because the JF has failed to appear for an Independent medical examination (IME)

The summons and complaint were filed on December 22, 2020.

On March 26, 2021, plaintiff discontinued the action as against Ridgewood Diagnostic Laboratory, LLC.

On July 22, 2021, defendants Astro Medical Services, Bruno Medical Supply Inc., James Mihalcik Md, PLLC, Longevity Medical Supply Inc., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Vital Points Acupuncture, P.C. appeared by counsel.

All other defendants have failed to appear or file an answer and the time within which defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

PENDING MOTION

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendant JF, ASC of Rockaway Beach, BP Dynamic Rehab Pt P.C., Bridgewater Chiropractic P.C., Bruno Medical Supply Inc., Greenleaf Chemists Inc, INJE Physical Therapy P.C., James Mihalcik Md PLLC, Longevity Medical Supply, Inc., Macintosh Medical, P.C., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Ralph Medical

Diagnostics P.C., Ridgewood Diagnostic Laboratory LLC, Scarborough Chiropractic P.C., Sedation Vacation Perioperative Medicine PLLC, And Vital Points Acupuncture P.C.

On February 14, 2022, plaintiff stipulated to withdraw the motion for a default judgment as against Astro Medical Services, Bruno Medical Supply Inc., James Mihalcik Md, PLLC, Longevity Medical Supply Inc., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., And Vital Points Acupuncture, P.C.

No opposition to the motion has been filed.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

In support of the motion, plaintiff admits that they received a letter, dated December 20, 2019, from Goldin & Rivin, PLLC, (NYSCEF Doc 14) indicating they represent JF for injuries and property damage sustained in this motor vehicle accident. Plaintiff however, failed to serve a copy of this motion on JF’s attorneys. Although not technically required by statute, when a defendant is known to have been represented, the better practice is to serve a courtesy copy of the motion on the attorney representing the party in a related proceeding.

Plaintiff also does not specifically identify any pending arbitration or litigation between the parties, although they seek a permanent stay of the same. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. A review of the

courts data base indicates a pending litigation between Nile Rehab Physical Therapy and plaintiff herein, under index CV 703052/21/KI. However, on the Request for Judicial Intervention, plaintiff failed to list any related actions. For these reasons, plaintiff's motion for a default judgment is denied without prejudice to renewal, on notice to counsel for any defendant and an affidavit listing any pending arbitration or litigation, or a statement affirming that none exists.

CONCLUSION

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants JF, ASC of Rockaway Beach, BP Dynamic Rehab Pt P.C., Bridgewater Chiropractic P.C., Bruno Medical Supply Inc., Greenleaf Chemists Inc, INJE Physical Therapy P.C., James Mihalcik Md PLLC, Longevity Medical Supply, Inc., Macintosh Medical, P.C., Medaid Radiology LLC, Nile Rehab Physical Therapy, P.C., Ralph Medical Diagnostics P.C., Ridgewood Diagnostic Laboratory LLC, Scarborough Chiropractic P.C., Sedation Vacation Perioperative Medicine PLLC, And Vital Points Acupuncture P.C. is denied without prejudice; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.



SABRINA KRAUS, J.S.C.

3/16/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: