

American Tr. Ins. Co. v Valet
2022 NY Slip Op 30969(U)
March 23, 2022
Supreme Court, New York County
Docket Number: Index No. 150499/2021
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,

INDEX NO. 150499/2021

MOTION DATE 03/04/2022

MOTION SEQ. NO. 001

- v -

MERZIL VALET, ALL CITY FAMILY HEALTHCARE CENTER, INC., ANDREW DOWD, ARIS DIAGNOSTIC MEDICAL, PLLC, CAREMORE MEDICAL SUPPLY, EAST SIDE PRIMARY MEDICAL CARE, P.C., EXCELL CLINICAL LAB, INC., FIFTH AVENUE SURGERY CENTER, HKP PHYSICAL THERAPY P.C., IGOR AMIGUD PHYSICIAN P.C., NOEL HOWELL, PARS MEDICAL P.C., SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SILVER NEEDLE ACUPUNCTURE P.C., SOUTH SHORE CHIROPRACTIC WELLNESS P.C., TRIBOROUGH ORTHOPEDICS, P.C., UNITED PHYSICIANS PLLC, VLADIMIR GRESSEL

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DECLARATORY

BACKGROUND

This action arises from an automobile accident on August 29, 2019 wherein Merzil Valet (MV) was allegedly injured while in a vehicle insured by plaintiff. MV filed a claim with plaintiff as a purported injured person under an insurance policy, number 1067794-02, issued by plaintiff.

Plaintiff commenced this action on or about January 15, 2021, seeking a declaratory judgment Against MV, All City Family Healthcare Center, Inc., Andrew Dowd, Aris Diagnostic Medical, PLLC, Caremore Medical Supply, East Side Primary Medical Care, P.C., Excell Clinical Lab, Inc., Fifth Avenue Surgery Center, HKP Physical Therapy P.C., Igor Amigud

Physician P.C., Noel Howell, Pars Medical P.C., Sedation Vacation Perioperative Medicine PLLC, Silver Needle Acupuncture P.C., South Shore Chiropractic Wellness P.C., Triborough Orthopedics, P.C., United Physicians PLLC, Vladimir Gressel, alleging that MV had failed to appear for an Independent Medical Examination.

On September 3, 2021, All City Family Healthcare, Inc. and Aris Diagnostic Medical PLLC, appeared by counsel and filed an answer.

On February 17, 2022, plaintiff discontinued the action as to Arias Diagnostic Medical PLLC.

PENDING MOTION

On March 4, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants MV, Andrew J. Dowd, M.D., Caremore Medical Supply, East Side Primary Medical Care, P.C., Excell Clinical Lab, Inc., Fifth Avenue Surgery Center, HKP Physical Therapy P.C., Igor Amigud Physician P.C., Noel Howell, M.D., Pars Medical P.C., Sedation Vacation Perioperative Medicine PLLC, Silver Needle Acupuncture P.C. South Shore Chiropractic Wellness P.C., Triborough Orthopedics, P.C., And United Physicians PLLC. These defendants have failed to appear or submit opposition.

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).

On February 16, 2022, plaintiff filed a Request for Judicial Intervention (RJI). The portion of the RJI form entitled “Related Cases” was left blank. However, a search of court records reveals three (3) pending actions, involving plaintiff and defendants herein. A Bronx County Civil Court action between East Side Primary Medical Care PC and plaintiff herein, under index no. CV 703604/20/BX, wherein East Side Primary Medical Care PC is represented by counsel, and a Kings County Civil Court action between Vladimir Gressel MD and plaintiff herein, under index no. CV 748833/20/KI, wherein Vladimir Gressel MD is represented by counsel, and a Richmond County Civil Court action between South Shore Chiropractic Wellness, PC and plaintiff herein, under index CV 701575/21/RI, wherein South Shore Chiropractic Wellness PC is represented by counsel. Counsels in those actions were not served with notice of this action or of this motion.

Although not technically required by statute, when a defendant is known to have been represented in a pending related action, the better practice is to serve a courtesy copy of the motion on the attorney representing the other party in a related proceeding.

In addition, plaintiff attaches as Exhibit C to the motion, a letter dated September 16, 2019, from the Law Office of Bryan Barenbaum, wherein plaintiff was put on notice that defendant MV was represented by counsel. The pleadings in this action were not served on MV’s counsel nor was a copy of this motion sent to the attorneys.

Further, although plaintiff seeks a permanent stay on pending arbitration or litigation between the parties, plaintiff fails to specifically identify any pending arbitration or litigation between the parties. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. 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

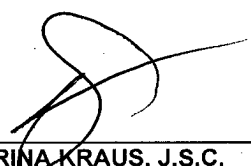
Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants Merzil Valet, Andrew J. Dowd, M.D., Caremore Medical Supply, East Side Primary Medical Care, P.C., Excell Clinical Lab, Inc., Fifth Avenue Surgery Center, HKP Physical Therapy P.C., Igor Amigud Physician P.C., Noel Howell, M.D., Pars Medical P.C., Sedation Vacation Perioperative Medicine PLLC, Silver Needle Acupuncture P.C. South Shore Chiropractic Wellness P.C., Triborough Orthopedics, P.C., And United Physicians PLLC. 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, including the Law Offices of Gabriel & Moroff, PC at 2 Lincoln Avenue, Suite 302, Rockville Centre, New York 11570; Gary Tsirelman, PC at 129 Livingston Street, 2nd & 3rd Floors, Brooklyn, New York 11201; Cohen & Jaffe, LLP at 2001 Marcus Avenue, Suite W295, Lake Success, New York 11042; on the Law Offices of Bryan Barenbaum at 2060 Eastern Parkway, Brooklyn, New York 11207, 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/suptmanh); and it is further

This constitutes the decision and order of the court.

3/23/2022			
DATE			SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE