

American Tr. Ins. Co. v Sylvaine-Usungu
2022 NY Slip Op 31008(U)
March 29, 2022
Supreme Court, New York County
Docket Number: Index No. 150896/2021
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. 150896/2021
MOTION DATE 03/07/2022
MOTION SEQ. NO. 001

- v -

MARTINE SYLVAINE-USUNGU, 21 CENTURY
CHIROPRACTIC CARE, ACCU REFERENCE MEDICAL
LAB LIMITED LIABILITY COMPANY, ROCKAWAYS ASC
DEVELOPMENT LLC, ATLANTIC DIAGNOSTIC
LABORATORIES LLC, CARESOFT LEASING CORP, CITY
WIDE HEALTH FACILITY, INC., COMMUNITY MEDICAL
CARE OF FLATBUSH, P.C., STEPHEN A. MATRANGOLO,
D.C., P.C., EBONE LEGALL, ENS MEDICAL, P.C., FLORID
LEISURE ACUPUNCTURE P.C, GRAND MEDICAL
SUPPLY CORP, INEW REHAB PHYSICAL THERAPY
P.C., INJE PHYSICAL THERAPY P.C., INSTA DRUGS INC,
JOSEPH A. RAIA, M.D., P.C., JULES PARISIEN, LZ
MEDICAL DIAGNOSTIC P.C, MARINA GADABORSHEV
D.C., METROPOLITAN MEDICAL & SURGICAL P.C., MIN
PHYSICAL THERAPY , P.C., PERFORMANCE
CHIROPRACTIC, P.C., PSYCHOLOGY YME P.C., RENAN
MACIAS, SEDATION VACATION PERIOPERATIVE
MEDICINE PLLC, SUESSERMAN CHIROPRACTIC
P.C., TOP CHOICE PHARMACY CORP., TRUSTEES OF
COLUMBIA UNIVERSITY

**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 - DEFAULT

BACKGROUND

This action arises from an automobile accident on January 9, 2020 wherein Martine Sylvaine-Usungu (MU) was allegedly injured while in a vehicle insured by plaintiff. MU filed a claim with plaintiff as a purported injured person under an insurance policy, number 1078167-01, issued by plaintiff.

Plaintiff commenced this action on or about January 27, 2021, seeking a declaratory judgment Against MU, 21 Century Chiropractic Care, Accu Reference Medical Lab Limited Liability Company, Rockaways Asc Development LLC D/B/A Asc Of Rockaway Beach, Atlantic Diagnostics LLC, Caresoft Leasing Corp, City Wide Health Facility, Inc., Community Medical Care Of Flatbush, P.C., Stephen A. Matrangolo, D.C., P.C., Ebone Legall, Ens Medical, P.C., Florid Leisure Acupuncture P.C, Grand Medical Supply Corp, Inew Rehab Physical Therapy P.C., Inje Physical Therapy P.C., Insta Drugs Inc, Joseph A. Raia, M.D., P.C., Jules Francois Parisien Md, Lz Medical Diagnostic P.C, Marina Gadaborshev D.C., Metropolitan Medical & Surgical P.C., Min Physical Therapy , P.C., Performance Chiropractic, P.C., Psychology Yme P.C., Renan Macias Md, Sedation Vacation Perioperative Medicine PLLC, Suesserman Chiropractic P.C., Top Choice Pharmacy Corp., Trustees Of Columbia University, alleging that MU had failed to appear for an Independent Medical Examination.

On June 4, 2021, Caresoft Leasing Corp., Jules Francois Parisien M.D., Metropolitan Medical & Surgical, P.C., Top Choice Pharmacy Corp., appeared by counsel and filed an answer.

PENDING MOTION

On March 7, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants MU, Accu Reference Medical Lab Limited Liability Company, Rockaways ASC Development LLC D/B/A ASC Of Rockaway Beach, Atlantic Diagnostic Laboratories LLC, City Wide Health Facility, Inc., Community Medical Care Of Flatbush, P.C., Stephen A. Matrangolo, D.C., P.C., Ens Medical, P.C., Florid Leisure Acupuncture P.C, Grand Medical Supply Corp, Inew Rehab Physical Therapy P.C., Inje Physical Therapy P.C., Insta Drugs Inc, Joseph A. Raia, M.D., P.C., Lz Medical Diagnostic P.C, Marina

Gadaborshev D.C., M1n Physical Therapy , P.C., Performance Chiropractic, P.C., Psychology Yme P.C., Sedation Vacation Perioperative Medicine PLLC, Suesserman Chiropractic P.C., And Trustees Of Columbia University.

On March 9, 2022, plaintiff discontinued the action as to Suesserman Chiropractic PC.

All other 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 23, 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 two (2) pending actions, involving plaintiff and defendants herein. A Kings County Civil Court action between Psychology YME, PC and plaintiff herein, under index no. CV 746277/20/KI, wherein Psychology YME, PC is represented by counsel, and a Kings County Civil Court action between City Wide Health Facility, Inc and plaintiff herein, under index no. CV 720648/21/KI, wherein City Wide Health Facility, Inc is represented by counsel. In addition, plaintiff attaches as Exhibit C (NYSCEF Doc 12) to the motion, a letter dated January 28, 2020, from the Gambone Law Group PLLC, wherein plaintiff was put on notice that defendant MU was 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.

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

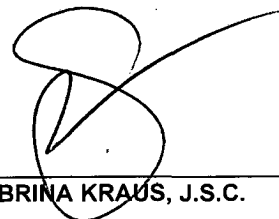
ORDERED that plaintiff's motion seeking a default judgment against defendants Martine Sylvaine-Usungu, Accu Reference Medical Lab Limited Liability Company, Rockaways ASC Development LLC D/B/A ASC Of Rockaway Beach, Atlantic Diagnostic Laboratories LLC, City Wide Health Facility, Inc., Community Medical Care Of Flatbush, P.C., Stephen A. Matrangolo, D.C., P.C., Ens Medical, P.C., Florid Leisure Acupuncture P.C, Grand Medical Supply Corp, Inew Rehab Physical Therapy P.C., Inje Physical Therapy P.C., Insta Drugs Inc, Joseph A. Raia, M.D., P.C., Lz Medical Diagnostic P.C, Marina Gadaborshev D.C., M1n Physical Therapy , P.C., Performance Chiropractic, P.C., Psychology Yme P.C., Sedation Vacation Perioperative Medicine PLLC, And Trustees Of Columbia University 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 Zara Javakov, Esq, 100 Livingston Street, 4th Floor, Brooklyn, New York 11201; Gary Tsirelman, PC at 129 Livingston Street, 2nd & 3rd Floors, Brooklyn, New York 11201; Gambone Law Group, PLLC 9131 Queens Boulevard, Suite 318, Elmhurst, New York 11373, 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.



3/29/2022
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	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE