

American Tr. Ins. Co. v Tapader
2022 NY Slip Op 31092(U)
April 1, 2022
Supreme Court, New York County
Docket Number: Index No. 152057/2021
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. 152057/2021
MOTION DATE 03/14/2022
MOTION SEQ. NO. 001

- v -

MDZHRUL TAPADER, ADVANCED RECOVERY
EQUIPMENT AND SUPPLIES, LLC, ATLAS PHARMACY
LLC, CITIMEDICAL I, PLLC, ENGLINTON MEDICAL,
P.C., EXCELL CLINICAL LAB, INC., FLUSHING HOSPITAL
AND MEDICAL CENTER, THE JAMAICA HOSPITAL,
LENCO DIAGNOSTIC LABORATORIES, INC., LONG
ISLAND JEWISH MEDICAL CENTER, LOMIS
ACUPUNCTURE P.C., NORTH SHORE-LONG ISLAND
JEWISH HEALTH SYSTEM, INC., PHOENIX MEDICAL
SERVICES, P.C.

**DECISION + ORDER ON
MOTION**

Defendant.

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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, 21, 24, 25

were read on this motion to/for JUDGMENT - DECLARATORY

BACKGROUND

This action arises from an automobile accident on June 20, 2018 wherein Mdzahrul Tapader (MT) was allegedly injured while in a vehicle insured by plaintiff. MT filed a claim with plaintiff as a purported injured person under an insurance policy, number FPT 004449, issued by plaintiff.

Plaintiff commenced this action on or about March 1, 2021, seeking a declaratory judgment against MT, Advanced Recovery Equipment And Supplies, LLC, Atlas Pharmacy LLC, Citimedical I, PLLC, Englinton Medical, P.C., Excell Clinical Lab, Inc., Flushing Hospital And Medical Center, The Jamaica Hospital, Lenco Diagnostic Laboratories, Inc., Long Island Jewish Medical Center, Lomis Acupuncture P.C., North Shore-Long Island Jewish Health

System, Inc., Phoenix Medical Services, P.C., alleging that MT had failed to appear for an Independent Medical Examination.

On May 14, 2021, Flushing Hospital Medical Center S/H/A Flushing Hospital And Medical Center And Jamaica Hospital Medical Center S/H/A The Jamaica Hospital, appeared by counsel and filed an answer.

On September 17, 2021, Atlas Pharmacy, LLC, Englinton Medical, P.C., Lomis Acupuncture, P.C., Phoenix Medical Services, P.C., appeared by counsel and filed an answer.

PENDING MOTION

On March 14, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants MT and Advanced Recovery Equipment And Supplies, LLC, Citimedical I, PLLC, Excell Clinical Lab, Inc., Lenco Diagnostic Laboratories, Inc., Long Island Jewish Medical Center, And North Shore-Long Island Jewish Health System, Inc.

On March 7, 2022, plaintiff discontinued the action as to Flushing Hospital Medical Center and Jamaica Hospital Medical Center.

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).

Plaintiff attaches as Exhibit C (NYSCEF Doc 13) to the motion, a letter dated June 28, 2018, from the Law office of Adam L. Shapiro & associates, PC, wherein plaintiff was put on notice that defendant MT 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 Mdzahrul Tapader and Advanced Recovery Equipment and Supplies, LLC, Citimedical I, PLLC, Excell Clinical Lab, Inc., Lenco Diagnostic Laboratories, Inc., Long Island Jewish Medical Center, And North Shore-Long Island Jewish Health System, Inc. 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 Office of Adam L. Shapiro & Associates, PC at 70-20 Austin Street, Suite 111, Forest Hills, New York and at 1 Radnor Road,

Plainview, New York 11803, 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.

4/1/2022
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: