

<b>American Tr. Ins. Co. v Zahran</b>
2022 NY Slip Op 31306(U)
April 18, 2022
Supreme Court, New York County
Docket Number: Index No. 153097/2021
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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INDEX NO. 153097/2021

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 03/31/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

AMIR ZAHARAN, BL PAIN MANAGEMENT,  
PLLC, BRONXWIDE PHYSICAL THERAPY P.C., CHA  
ACUPUNCTURE P.C., CMA PSYCHOLOGY, P.C., DEAN  
SPINAL CHIROPRACTIC P.C., INJURY CARE  
CHIROPRACTIC P.C., M & D ELITE PHARMACY,  
LLC, MEDALLIANCE MEDICAL HEALTH SERVICES,  
INC., MORRIS MEDICAL EQUIPMENT INC, WILLIAM  
ELTON

**DECISION + ORDER ON  
MOTION**

Defendant.

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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

were read on this motion to/for

JUDGMENT - DECLARATORY

**BACKGROUND**

This action arises from an automobile accident on June 20, 2018 wherein Amir Zahran (AZ) was allegedly injured while in a vehicle insured by plaintiff. AZ filed a claim with plaintiff as a purported injured person under an insurance policy, number BC B505621, issued by plaintiff.

Plaintiff commenced this action on or about March 29, 2021, seeking a declaratory judgment against AZ, BL Pain Management, PLLC, Bronxwide Physical Therapy P.C., Cha Acupuncture P.C., CMA Psychology, P.C., Dean Spinal Chiropractic P.C., Injury Care Chiropractic P.C., M & D Elite Pharmacy, LLC, Medalliance Medical Health Services, Inc., Morris Medical Equipment Inc, and William Elton, M.D., alleging that AZ had failed to appear for an Independent Medical Examination.

On December 8, 2021, BL Pain Management, PLLC, Cha Acupuncture, P.C., CMA Psychology, P.C., M & D Elite Pharmacy, LLC, and Morris Medical Equipment Inc., appeared by counsel and filed an answer.

AZ, Bronxwide Physical Therapy P.C., Dean Spinal Chiropractic P.C., Injury Care Chiropractic P.C., Medalliance Medical Health Services, Inc., and William Elton, M.D., 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**

On March 14, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants AZ, Bronxwide Physical Therapy P.C., Dean Spinal Chiropractic P.C., Injury Care Chiropractic P.C., Medalliance Medical Health Services, Inc., and William Elton, M.D., and for summary judgment pursuant to CPLR §3215 as against BL Pain Management, PLLC, Cha Acupuncture, P.C., CMA Psychology, P.C., M & D Elite Pharmacy, LLC, and Morris Medical Equipment Inc.

On March 25, 2022, plaintiff discontinued the action as to BL Pain Management, PLLC, Cha Acupuncture, P.C., CMA Psychology, P.C., M & D Elite Pharmacy, LLC, and Morris Medical Equipment Inc.

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 14) to the motion, a letter dated September 1, 2020, from the Law Offices of Michael T. Ridge, wherein plaintiff was put on notice that defendant AZ was represented by counsel. Counsel was not served with notice of this action or of this motion.

Plaintiff also submits a Request for Judicial Intervention in support of the motion for a default judgment (NYSCEF Doc 24). The section of the RJI entitled “Related Cases” is blank. However, a search of court records reveals a pending action, a Suffolk County Civil Court, under index 3047/21, involving plaintiff and Dean Spinal Chiropractic, PC, a defendant herein where Dean Spinal Chiropractic, PC is represented by counsel. Counsel in that action was 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**

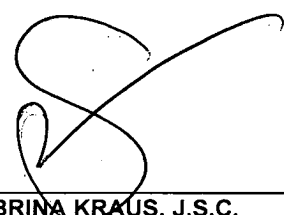
Wherefore, it is hereby

ORDERED that plaintiff’s motion seeking a default judgment against AZ, Bronxwide Physical Therapy P.C., Dean Spinal Chiropractic P.C., Injury Care Chiropractic P.C., Medalliance Medical Health Services, Inc., and William Elton, M.D., 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 Michael T. Ridge at 910 Grand Concourse Suite 1D, Bronx, New York 10451, and on The Law Offices of Gregory A. Goodman, PC at 380 North Broadway, Suite 305, Jericho, New York 11753, 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](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of the court.



4/18/2022  
DATE

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SABRINA KRAUS, J.S.C.

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: