

American Tr. Ins. Co. v NYU Langone Orthopedic Hosp.

2022 NY Slip Op 31584(U)

May 12, 2022

Supreme Court, New York County

Docket Number: Index No. 654841/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

NYU LANGONE ORTHOPEDIC HOSPITAL A/A/O
HABIBOU SANA, and AMERICAN COUNTRY INSURANCE
COMPANY,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion for

JUDGMENT BY DEFAULT

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered that plaintiff's motion for entry of a default judgment pursuant to CPLR 3215 is denied, based on the following memorandum decision.

Background

In this action for trial de novo pursuant to Insurance Law § 5106(c), plaintiff American Transit Insurance Company ("plaintiff") seeks to vacate an arbitration award in favor of defendant NYU Langone Orthopedic Hospital, as assignee of Habibou Sana ("NYU Langone"), which awarded defendant the cost of medical services rendered to its assignor as a result of a motor vehicle accident allegedly covered by plaintiff's policy. Plaintiff asserts that NYU Langone's assignor's injuries resulted from a subsequent accident that was covered by defendant American Country Insurance Company's ("American Country") policy. There is no opposition to the instant motion.

NYU Langone's assignor, Sana, was treated at NYU Langone from March 1, 2019 through March 7, 2019, for injuries claimed to be as a result of a motor vehicle accident which occurred on March 30, 2018 in which she was the driver (NYSCEF Doc. No. 19, NF-5 Hospital Facility Form). She assigned her claims to NYU Langone, who billed plaintiff in the amount of \$43,442.91 (*id.*). Plaintiff denied the claim on April 1, 2019, on the grounds that "claimant was involved in another accident 1/15/2019. All medical and loss wage claims must be submitted to the carrier-American Country Insurance Company, Claim #63CBLG19000778" (NYSCEF Doc. No. 42).

NYU Langone commenced an arbitration proceeding before the American Arbitration Association ("AAA"), and a hearing was held before arbitrator Patricia Daugherty on February 19, 2021 (NYSCEF Doc. No. 45, Arbitration Award). The arbitrator rendered her decision on March 22, 2021, which awarded NYU Langone the full amount of the claim (*id.*). The arbitrator found that, plaintiff, bearing the burden of proof to show that the accident was not causally related to Sana's injuries, had not submitted sufficient proof that the subsequent accident was the cause of Sana's injuries for which she received the claimed treatment (*id.* at 2). Plaintiff sought review of the award by a master arbitrator, and the master arbitrator affirmed the award in its entirety (NYSCEF Doc. No. 45, Master Arbitration Award).

Plaintiff then commenced the instant action pursuant to Insurance Law § 5106(c), seeking de novo adjudication of the claim (NYSCEF Doc. No. 1). NYU Langone appeared and answered the complaint (NYSCEF Doc. No. 4), and then moved for summary judgment dismissing the complaint (NYSCEF Doc. Nos. 14-24). Rather than oppose the motion, plaintiff instead entered into a stipulation whereby the parties agreed to allow plaintiff to amend the caption, summons

and complaint to add American Country as a defendant (NYSECF Doc. No. 29). The Court directed that an amended summons and complaint be served within 30 days of the Court so-ordering the stipulation.

NYU Langone answered the amended complaint on November 4, 2021 (NYSCEF Doc. No. 31). An affidavit of service filed on November 9, 2021 attests to service on American Country by delivery to an employee authorized to accept service pursuant to CPLR 311(a)(1) on November 1, 2021 (NYSCEF Doc. No. 33). To date, American Country has neither answered the amended complaint nor otherwise appeared in the action.

Discussion

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, plaintiff submitted an affidavit of service (NYSCEF Doc. No. 33), the affidavit of its counsel, Adam Waknine, Esq., attesting to American Country’s default (NYSCEF Doc. No. 38, ¶ 29), and the affidavits of Cheryl Glaze, plaintiff’s No-Fault Claims Supervisor, Luis

Campbell, plaintiff's Mail Room Supervisor, and Dr. Vito Loguidice, M.D., plaintiff's peer review doctor, attesting to the facts of plaintiff's claim (NYSCEF Doc. No. 43, supporting affidavits and Peer Review). Dr. Loguidice opines that the subsequent accident on January 15, 2019 is the true cause of the injuries that necessitated Sana's surgery two months later (NYSCEF Doc. No. 43, Peer Review).

On American Country's default, however, plaintiff seeks a declaratory judgment against American Country in four respects:

1. Vacating the arbitration award rendered in favor of NYU Langone;
2. Vacating the master arbitration award rendered in favor of NYU Langone;
3. Declaring that NYU Langone's assignor's injuries are reimbursable by American Country as arising out of the January 15, 2019 accident; and
4. Declaring that NYU Langone may enter judgment against American Country.

Insurance Law § 5106(c) provides two separate remedies from a master arbitration award: a trial de novo, as plaintiff has sought herein, or a special proceeding under Article 75 of the CPLR to either confirm or vacate the award. Upon choosing a trial de novo, any request to confirm or vacate the arbitration awards is rendered academic (*Allstate Ins. Co. v Nalbandian*, 89 AD3d 648, 649 [2d Dept 2011]). Accordingly, plaintiff is not entitled to a declaration on its first two points.

Further, the purpose of the trial de novo provision is to allow for a new adjudication of the claim itself, which is between NYU Langone and plaintiff (Insurance Law § 5106[c]). American Country was not a party to the arbitration, nor is it the recipient of a claim for services. The dispute among the parties, at its core, is the question of whether plaintiff or American Country is responsible for paying NYU Langone's claims. Any declaration in favor of plaintiff would impact the rights of NYU Langone, which would then be forced to separately seek relief

against American Country. NYU Langone is not in default in this action, and therefore a declaratory judgment impacting its rights is improper (*Merchants Ins. Co. of New Hampshire, Inc. v Long Is. Pet Cemetery, Inc.*, 206 AD2d 827, 828 [4th Dept 1994] [“Denial of the default judgment was proper because the declaratory relief requested clearly affects the rights of other parties not alleged to be in default”]).

Moreover, and with respect to those branches of plaintiff’s proposed declaratory judgment directing that NYU Langone may be reimbursed by American Country and should have judgment therefor, the Court notes that the procedural posture of this action is such that plaintiff appears to be asking for relief on behalf of NYU Langone, a defendant, and yet NYU Langone has not sought such relief against its co-defendant American Country itself, by cross-claim, third-party action, or otherwise. Plaintiff cites no case law or statutory support for the Court’s power to enter such relief under these circumstances. While the Court would, in its discretion, be justified in declaring simply that plaintiff is not required to reimburse NYU Langone, for the reasons stated above such relief is improper on a motion for default judgment under the circumstances.

Accordingly, it is hereby

ORDERED that the motion is denied; and it is further

ORDERED that the parties are directed to appear for a virtual conference via Microsoft Teams to be arranged by the Court on June 8, 2022 at 10:00 AM.

This constitutes the Decision and Order of the Court.

ENTER:

Louis L. Nock

<u>5/12/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE