

American Tr. Ins. Co. v Minaya
2024 NY Slip Op 35177(U)
April 8, 2024
Supreme Court, Bronx County
Docket Number: Index No. 804914/2023E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 20

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

-against-

Index No. 804914/2023E

KARLA MINAYA,
ASM DIAGNOSTIC, INC.,
CHRIOPRACTIC DIAGNOSTIC EVALUAIONS, P.C.,
COMFORT CARE NP IN FAMILY HEALTH, P.C.,
DANIEL SHAPIRO, M.D.
EAST TREMONT AMBULATORY SURGICAL CENTER,
EAST TREMONT MEDICAL CENTER,
ECHENIQUE MEDICAL OFFICE, P.C.,
EMED PHARMACY CORP.,
EVERHEALTH PHARMACY, INC.,
FIRST SUPPLY INC.,
GET WELL RX INC.,
GLOBAL TECH DIAGNOSTIC, INC.,
HEALTHY ELITE,INC.,
HERSCHEL KOTKES, M.D., P.C.,
H. LEVITAN MEDICAL, P.C.,
HOLLIS DRUGS INC.,
INTERVENTIONAL PHYSICAL MEDICINE AND
REHABILITATION OF NEW YORK, PLLC.,
LENUXE SUPPLY INC.,
LONG BEACH CHIROPRACTIC EVALUATION, P.C.,
MANAMIM MS INC.,
MEDICAL IMAGING OF BRONX, P.C.,
MKTM PHYSICAL THERAPY, P.C.,
MODERN REMEDIES, LLC.,
NEW YORK CITY FIRE DEPARTMENT EMS,
OMEGA MEDICAL EQUIPMENT CORP.,
PITCH MEDICAL, P.C.,
PSYCHOLOGY 21, P.C.,
SBH PHYSCIANS, P.C.,
SANTE MEDIC SUPPLY,INC.,

MOTION SEQ. 1

DECISION AND ORDER

SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC.,
SINAI DIAGNOSTICS, LLC.,
ST. BARNABAS HOSPITAL,
TRI-BOROUGH NY MEDICAL PRACTICE, P.C.,
WHIPPLE SUPPLY, INC.,

Defendants.

_____^x
HON. VERONICA G. HUMMEL, A.S.C.J.

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed in NYSCEF regarding the motion of plaintiff AMERICAN TRANSIT INSURANCE COMPANY [Mot. Seq.1] (plaintiff), made pursuant CPLR 3215, for an order granting plaintiff default judgment as against various defendants.

Plaintiff commenced this declaratory action against thirty -five (35) defendants. By notice of motion, plaintiff now moves for a default judgment as against twenty (20) defendants. After the filing of the motion, plaintiff withdrew the motion as to four (4) defaulting defendants.

The defaulting defendants do not oppose the motion.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, a plaintiff is required to submit proof of service of the summons and complaint, the facts constituting the cause of action, and the defendant's default in answering or appearing. *see* CPLR 3215; *Clarke v. Liberty Mut. Fire Ins. Co.*, 150 A.D.3d 1192 (2d Dep't 2017). To demonstrate the facts constituting the cause of action, the plaintiff needs to submit sufficient proof to enable a court to determine if the cause of action is viable. *see Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 71 (2003). The court may consider the complaint, affidavits, and affirmations submitted by the plaintiff. *Id.* The movant must also establish that the parties were served with notice of the motion for a default judgment.

The motion is denied with leave to renew.

Plaintiff seeks a default judgment against at least sixteen (16) defendants, but provides no analysis of the service accomplished on each defendant with the exception of uploading a batch of affidavits of service. Plaintiff includes no discussion beyond a broad allegation in the attorney affirmation, with no details whatsoever, that the parties were personally served under CPLR 311(a)(1), 308(1),308(2), 320 or served under Business Corporation Law 306(b). Of note, a number of the defaulting defendants are limited liability corporations that are not subject to BCL 306. Hence, the motion is denied with leave to renew to permit the attorney to set forth in an affirmation the specific

method of service effectuated on each remaining defaulting defendant. The court is not required to scour the record on its own in search of possible evidence or legal analysis to support a party's claim, and is not obliged to investigate the basis of claimed facts or applicable law. *See generally, DPB Family LLC. v. Eutychia Group, LLC.*, 2022 WL 3133897 (Sup. Ct. New York County 2022).

Furthermore, plaintiff fails to provide an affidavit of merit setting forth facts as to each defendant's role in the action. Based on scant submissions, therefore, plaintiff also fails to satisfy the merit criteria for a default judgment as nothing in the moving papers sets forth the facts underlying the causes of action as against the individual defendants. Of note, there is no explanation for the inclusion of the New York City Fire Department EMS in this action. The motion [Mot. Seq. 1] for a default judgment is therefore denied with leave to renew.

Accordingly, it is hereby

ORDERED that the motion of plaintiff AMERICAN TRANSIT INSURANCE COMPANY [Mot. Seq.1], made pursuant CPLR 3215, for an order granting plaintiff default judgment against defaulting defendants is denied with leave to renew by October 1, 2024; and it is further

ORDERED that plaintiff shall serve a copy of this Decision/Order with notice of entry by first class mail on the defaulting defendants by September 10, 2024, and upload an affidavit of service proving said service to NYSCEF by September 15, 2024; and it is further

ORDERED that the Clerk shall mark motion 1 decided in all court records.

The foregoing constitutes the Decision/Order of the court.

Dated: Bronx, New York

August 8, 2024

E N T E R,

Hon. s/Hon. Veronica G. Hummel/signed 08/08/2024

HON. VERONICA G. HUMMEL, A.S.C.J.

