

American Tr. Ins. Co. v Rodriguez

2013 NY Slip Op 33292(U)

December 13, 2013

Supreme Court, New York County

Docket Number: 151205/2013

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 81

Index Number : 151205/2013
AMERICAN TRANSIT INSURANCE
vs
RODRIGUEZ, GRISELIDA
Sequence Number : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the annexed decision.

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/16/2013

Anil C. Singh, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

-against-

DECISION AND
ORDER
Index No. 151205/2013

Mot. Seq. 001

GRISELIDA RODRIGUEZ,
ADVANCED ORTHOPAEDICS, PLLC,
ANESTHESIOLOGY ASSOCIATES OF MANHATTAN, PC,
ARCE MEDICAL & DIAGNOSTIC SERVICES, PC,
BACK TO LIFE CHIROPRACTIC SERVICES,
CLINICAL LABORATORY MANAGEMENT, INC,
COOL SYSTEMS, INC.,
LUIGIA C. ABRAMOVICI, MD,
NCO FINANCIAL SYSTEMS INC.,
NYU HOSPITALS CENTER, HJD,
PARK AVENUE ORTHOTICS, INC.,
STAND UP MRI OF QUEENS, PC,
STEVEN STRUHL, MD, PLLC,

Defendants.

-----X

HON. ANIL C. SINGH, J.:

Plaintiff seeks summary judgment, pursuant to CPLR § 3212(b) against defendants
GRISELIDA RODRIGUEZ, ARCE MEDICAL & DIAGNOSTIC SERVICES, P.C. and BACK
TO LIFE CHIROPRACTIC SERVICES (collectively “Answering Defendants”). Plaintiff seeks
a default judgment, pursuant to CPLR § 3215, against defendants ADVANCED
ORTHOAEDICS, PLLC, CLINICAL LABORATORY MANAGEMENT, INC, COOL
SYSTEMS, INC., LUIGIA C. ABRAMOVICI, MD, NCO FINANCIAL SYSTEMS INC., NYU
HOSPITALS CENTER, HJD, PARK AVENUE ORTHOTICS, INC., and STEVEN STRUHL,
MD, PLLC (collectively the “Defaulting Defendants”). Plaintiff discontinues the matter against

[* 3] ANESTHESIOLOGY ASSOCIATES OF MANHATTAN, PC, and STAND UP MRI OF QUEENS, PC. The motion for summary judgment is opposed by the Answering Defendants. The motion for default judgment is unopposed.

Plaintiff, AMERICAN TRANSIT INSURANCE COMPANY (“ATIC”), provided an insurance policy to Masada II Car & Limo Service under policy number CAP 604301. Defendant GRISELIDA RODRIGUEZ was allegedly injured in an auto accident involving a vehicle covered by this policy and made claims as a purported eligible injured person covered by the above referenced insurance policy under claim number 754473-04. The other defendants are medical providers which received assignments of rights from Mrs. Rodriguez.

Summary judgment will be granted if it is clear that no triable issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden is on the moving party to make a prima facie showing of entitlement to summary judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion (*Zuckerman v City of New York*, 49 NY2d at 562).

Plaintiff alleges that it scheduled independent medical examinations (“IME”) of GRISELIDA RODRIGUEZ for 5/4/2009 and 5/18/2009 and that GRISELIDA RODRIGUEZ failed to attend either IME. Failure to appear for IMEs is a breach of a condition precedent to coverage under the no-fault policy. See *Unitrin Advantage Ins. Co. v. Bayshore Physical*

[*4]

Therapy, PLLC, 82 A.D.3d 559 (1st Dept. 2011). Based upon the failure to appear at the IMEs, Plaintiff denied all of Mrs. Rodriguez's no-fault claims and those of her assignees. Plaintiff offers the sworn affidavits of Sandra Joseph, Luis Campbell, and Denis Wolf as well as the affirmations of Dr. Robert Snitkoff and Dr. Eric Roth in support of its position.

The Answering Defendants offer the sworn affidavit of GRISELIDA RODRIGUEZ in opposition to the motion for summary judgment. In her affidavit, Mrs. Rodriguez states that she never received the examination appointment letter regarding the 5/18/2009 examinations. No mention is made of the letter regarding the 5/4/2009 examination.

However, the mailing of a letter creates a presumption that it was received and a simple denial is insufficient to rebut this presumption. See *American Transit Ins. Co. v. Lucas*, 111 A.D.3d 423, 2013 WL 5942371 (1st Dept. 2013). In the present case, the sworn affidavits of Sandra Joseph and Luis Campbell, together with copies of the IME scheduling letters establish that the letters were mailed to GRISELIDA RODRIGUEZ. The affidavit of GRISELIDA RODRIGUEZ is insufficient to rebut the presumption that she received the letters, especially in light of her presumed receipt of the letter notifying her of the 5/4/2009 IME.

Accordingly, upon the affidavits of GRISELIDA RODRIGUEZ, Sandra Joseph, Luis Campbell, and Denis Wolf, the affirmations of Dr. Robert Snitkoff and Dr. Eric Roth and all other papers heretofore had herein, it is

ORDERED that plaintiff's motion for summary judgment against GRISELIDA RODRIGUEZ, ARCE MEDICAL & DIAGNOSTIC SERVICES, P.C. and BACK TO LIFE CHIROPRACTIC SERVICES is granted, and it is further

ORDERED that the plaintiff's motion for default judgment against ADVANCED

[* 5]
ORTHOPAEDICS, PLLC, CLINICAL LABORATORY MANAGEMENT, INC, COOL
SYSTEMS, INC., LUIGIA C. ABRAMOVICI, MD, NCO FINANCIAL SYSTEMS INC., NYU
HOSPITALS CENTER, HJD, PARK AVENUE ORTHOTICS, INC., and STEVEN STRUHL,
MD, PLLC is granted on default; and it is further

ADJUDGED and DECLARED that the plaintiff has no obligation to provide no-fault
benefits to the Defaulting Defendants under claim number 754473-04, insurance policy number
CAP 604301.

The foregoing constitutes the decision and order of the court.

Date: 12/13/2013
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**