

Hertz Corp. v Palemire
2017 NY Slip Op 30820(U)
April 21, 2017
Supreme Court, New York County
Docket Number: 151471/2016
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

THE HERTZ CORPORATION, INCLUDING ALL OF
ITS SUBSIDIARIES AND AFFILIATES,
INCLUDING BUT NOT LIMITED TO HERTZ
VEHICLES, LLC AND DTG OPERATIONS, INC.
d/b/a DOLLAR RENT A CAR,

Plaintiff,

DECISION AND ORDER
Index No: 151471/2016

-against-

JOHN PALEMIRE, D.C., SUN CHIROPRACTIC
SERVICES, P.C., MEDALLIANCE MEDICAL
HEALTH SERVICES, INC., ALPHA IMAGING
CONSULTANTS, PLLC, LIDA'S MEDICAL SUPPLY,
INC., UNION WELLNESS CENTER, EXCEL
SURGERY CENTER, L.L.C., BLUE BELL
ACUPUNCTURE, P.C., GERARD AVENUE
MEDICAL, P.C., IRENE MEDICAL, P.C., SPINE AND
PAIN CONSULTATION, PLLC a/k/a SPINE AND
PAIN CONSULTATION, PLLC, OSTEO.COMM, LLC,
RANDALL VICTOR EHRLICH, M.D., P.C. a/k/a
RANDALL V. EHRLICH, M.D., P.C., LR MEDICAL,
PLL, a/k/a LR MEDICAL, P.C., SURGERY CENTER
OF ORADELL, AMIN BUTLER AND KIM CHANCEY

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/ Affirmations/ Memos of Law annexed	<u>1</u>

ERIKA M. EDWARDS, J.:

Plaintiff Hertz Vehicles, LLC ("Hertz") now moves, by notice of motion, dated January
31, 2017, for a default judgment in its favor, pursuant to CPLR §3215, against Defendants
Randall Victor Ehrlich, M.D., P.C. a/k/a Randall V. Ehrlich, M.D., P.C., LR Medical, PLLC

a/k/a LR Medical, P.C. and Surgery Center of Oradell (“Defaulting Defendants”). Hertz also moves for leave to amend the complaint to add Orthocaretech, Inc. as an additional defendant in this declaratory judgment action. For the reasons set forth herein, Hertz’s motion is GRANTED without opposition to the extent that declaratory judgment is entered in Hertz’s favor as against the above-referenced Defaulting Defendants only and this matter is continued against the remaining defendant.¹

Plaintiff Hertz commenced this action on February 23, 2016, for a judgment declaring that it owes no duty to pay any No-Fault benefits arising out of an alleged motor vehicle accident which occurred on February 23, 2015, under Hertz claim number 02-2015-08317. The individual defendants, Amin Butler (“Butler”) and Kim Chancey (“Chancey”), were occupants of a vehicle that was self-insured by Hertz. The complaint alleges that after Hertz received notice of the accident, it conducted an investigation and the Claimants provided conflicting testimony during their Examinations Under Oath (“EUO’s”). The complaint also alleges that Hertz timely sent all of the medical provider defendants letters scheduling EUO’s; many of the medical provider defendants failed to attend the scheduled EUO’s on two occasions; and their failure to appear for the EUO’s constitutes a breach of a condition precedent to No-Fault coverage.

On September 28, 2016, Hertz was granted leave by the Honorable Geoffrey D.S. Wright to amend the original complaint to add Defaulting Defendants. On October 7, 2016, Hertz filed the Amended Summons and Complaint, adding the Defaulting Defendants. On October 18, 2016, the Amended Summons and Amended Verified Complaint were served upon Randall Victor Ehrlich, M.D., P.C. a/k/a Randall V. Ehrlich, M.D., P.C., LR Medical, PLLC a/k/a LR Medical, P.C. via the Secretary of State, pursuant to BCL §306. Defendant Surgery Center of Oradell was

¹ These three defendants are the only defendants remaining in the action as all prior defendants have either been discontinued from the action or defaulted.

personally served with the Amended Summons and Verified Complaint on October 20, 2016. An additional copy of the Summons and Complaint was mailed to Defaulting Defendants on January 31, 2017. To date, however, Defaulting Defendants have failed to answer, appear or move against the complaint, and their time to do so has long since expired. Additionally, after the Amended Summons and Complaint were filed, Hertz received bills from Orthocaretech, Inc. seeking No-fault benefits for the alleged collision on February 23, 2015, referenced by Hertz claim number 02-2015-08317. Hertz now seeks to add Orthocaretech, Inc. as a defendant to the action.

Accordingly, it is hereby

ORDERED that Hertz's motion for default judgment is granted to the extent that the Clerk is directed to enter declaratory judgment in favor of Hertz as against Defendants Randall Victor Ehrlich, M.D., P.C. a/k/a Randall V. Ehrlich, M.D., P.C., LR Medical, PLLC a/k/a LR Medical, P.C. and Surgery Center of Oradell only; and it is further

ADJUDGED and DECLARED that Hertz owes no duty Defendants Randall Victor Ehrlich, M.D., P.C. a/k/a Randall V. Ehrlich, M.D., P.C., LR Medical, PLLC a/k/a LR Medical, P.C. and Surgery Center of Oradell to pay No-Fault claims regarding the alleged accident which occurred on February 23, 2015; and it is further

ADJUDGED and DECLARED that Defendants Randall Victor Ehrlich, M.D., P.C. a/k/a Randall V. Ehrlich, M.D., P.C., LR Medical, PLLC a/k/a LR Medical, P.C. and Surgery Center of Oradell breached a condition precedent to coverage under the No-Fault regulations by failing to appear for duly noticed EUO's on at least two occasions and these defendants have no right to collect No-Fault benefits as the claimant's assignees related to the alleged accident which occurred on February 23, 2015; and it is further

ORDERED that Hertz's motion to amend the complaint to add Orthocaretech, Inc. as an additional defendant in this declaratory judgement action is granted; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

THE HERTZ CORPORATION, INCLUDING ALL OF ITS
SUBSIDIARIES AND AFFILIATES, INCLUDING BUT
NOT LIMITED TO HERTZ VEHICLES, LLC AND DTG
OPERATIONS, INC. d/b/a DOLLAR RENT A CAR,

Plaintiff

-against-

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WELLNESS CENTER, EXCEL SURGERY CENTER,
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MEDICAL, P.C., SURGERY CENTER OF ORADELL,

ORTHOCARETECH, INC., AMIN BUTLER AND KIM
CHANCEY

Defendants.

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 upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 148) who are directed to restore the case to the court calendar and mark the court's records to reflect the additional party.

This constitutes the decision and order of the court.

Date: April 21, 2017



HON. ERIKA M. EDWARDS, J.S.C.