

Hertz Vehs., LLC v Alluri
2017 NY Slip Op 32404(U)
November 13, 2017
Supreme Court, New York County
Docket Number: 154077/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

Justice

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HERTZ VEHICLES, LLC,

INDEX NO. 154077/2015

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 002

JAGGA ALLURI, M.D., ATLAS ORTHOSURGERY, P.C.,
FRANKLIN HOSPITAL, INNOVTIVE MEDICAL, P.C.,
VENKATESAN SIVARAMAN, ADVANCED ORTHOPEDICS,
P.C., PHILIP ABESSINIO, D.C., NORTSHORE LIJ MEDICAL,
P.C., CAROLE LM SCHUSTER, PRECISION IMAGING OF NEW
YORK, P.C., NORTH AMERICAN PARTNERS IN ANESTHESIA,
L.L.P., NASIR ISMAIL, LAKEISHA HINTON, and KEYION
CHEAIRS,

DECISION, ORDER AND
JUDGMENT

Defendants.

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The following e-filed documents, listed by NYSCEF document number 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for

DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this declaratory judgment action, plaintiff Hertz Vehicles, LLC moves, pursuant to CPLR 3215 for a default judgment against defendants Jagga Alluri M.D., Atlas Orthosurgery, P.C., Franklin Hospital, Innovative Medical, P.C., Venkatesan Sivaraman, Philip Abessinio, D.C., North Shore LIJ Medical, P.C., Carole LM Schuster, Precision Imaging of New York, P.C., North American Partners in Anesthesia, L.L.P., Nasir Ismail, Lakeisha Hinton, and Keyion Cheairs. The motion is unopposed. After a review of plaintiff's motion, as well as the relevant statutes and case law, the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

This action was commenced by plaintiff Hertz Vehicles, LLC against defendants Jagga Alluri, M.D. (“Alluri”), Atlas Orthosurgery, P.C. (“Atlas”), Franklin Hospital (“Franklin”), Innovative Medical, P.C. (“Innovative”), Venkatesan Sivaraman (“Sivaraman”), Advanced Orthopedics, P.C. (“Advanced”), Philip Abessinio, D.C. (“Abessinio”), North Shore LIJ Medical, P.C. (“North Shore”), Carole LM Schuster (“Schuster”), Precision Imaging of New York, P.C. (“Precision”), North American Partners in Anesthesia, L.L.P. (“North American”), Nasir Ismail, Lakeisha Hinton, and Keyion Cheairs on or about April 22, 2015.

In the complaint, plaintiff alleged, inter alia, that defendants Ismail, Hinton and Cheairs (“claimants”) were involved in an automobile accident in Queens, New York on August 20, 2014 and, given that the police report indicated that the vehicles involved did not sustain visible damage and the claimants did not require medical attention at the scene, there was a “strong possibility” that the “loss was staged or intentionally caused and/or that the treatment [claimants underwent as a result of the incident] was not related to the collision.” Compl. at pars. 16, 23. Plaintiff further alleged that, given the foregoing as well as the testimony by claimants Ismail and Hinton at their examinations under oath (“EUOs”), it had a “founded belief” that claimants’ injuries and the treatment they allegedly received were not causally related to the accident allegedly covered by an insurance policy it issued. Complaint at par. 33. The remaining defendants named were medical providers which treated claimants following the alleged incident. Of those medical providers, only Alluri, Innovative, Sivaraman, Abessinio, Schuster, and Advanced have answered.¹ Atlas has settled with plaintiff.

¹ Plaintiff previously moved for a default against the same defendants (motion sequence 001). By order dated May 16, 2016, this Court denied that motion on the ground that plaintiff failed to set forth facts constituting the claim.

Plaintiff now renews its motion, pursuant to CPLR 3215, for a default judgment against defendants Franklin, Advanced, North Shore, Precision, North American, and claimants due to their failure to answer or otherwise appear in this matter.² In support of the motion, plaintiff submits, as it did on its initial motion, an attorney affirmation and the affidavit of plaintiff's claims representative, Jeremy Rothenberg, who avers, inter alia, that, based on the circumstances surrounding the incident, and claimants' treatment, plaintiff has a "founded belief" that the treatment was not causally related to the alleged accident. However, in an attempt to establish facts constituting the claim, it now also submits, inter alia, transcripts of the EUOs of claimants Ismail and Hinton setting forth their versions of the alleged occurrence.

CONCLUSIONS OF LAW:

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 him." It is well settled that "[o]n 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." *See Atlantic Cas. Ins. Co. v R/JNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

"New York courts "rarely, if ever" grant declaratory judgments on default "with no inquiry by the court as to the merits." *Tanenbaum v Allstate Ins. Co.*, 66 AD2d 683, 684 (1st Dept 1978). Default declaratory judgment actions "will not be granted on the default and pleadings alone" but require that the "plaintiff establish a right to a declaration against . . . a defendant." *Levy v Blue Cross & Blue Shield of Greater N.Y.*, 124 AD2d 900, 902 (3d Dept 1986), quoting *National*

² Although Advanced cross-moved to dismiss the complaint, it stipulated on October 6, 2016 to withdraw its motion in exchange for permission to file its answer and the withdrawal of plaintiff's motion for default.

Sur. Corp. v Peccichio, 48 Misc2d 77, 78 (Sup Ct Albany County 1965).” *de Beeck v Costa*, 39 Misc3d 347 (Sup Ct New York County 2013).

The initial motion for default was denied, inter alia, because Rothenberg’s affidavit was conclusory and unsupported by any evidence, other than the police report, which would provide plaintiff with the basis for its “founded belief” that claimants’ injuries were not causally related to the alleged accident. On this motion, however, plaintiff also submits copies of the EUOs of claimants Ismail and Hinton, which were a part of plaintiff’s claims investigation.³

Plaintiff argues that, based on the testimony at the EUOs, Ismail and Hinton did not miss any work as a result of the collision; plaintiff’s vehicle was operable after the collision; claimants went to dinner after the collision rather than seek medical treatment; Ismail and Hinton described the impact on the vehicle as hard, yet admitted that there was little damage to both vehicles involved in the collision; Ismail could not remember the cost of the rental car; Ismail and Hinton received X-Rays, nerve testing and MRIs but could not recall the results of the tests; Ismail received a shoulder stretching machine, but was unable to use it in his apartment; and the attorney representing Ismail and Hinton was uncooperative during their EUOs, continuously going off the record in order to coach them. In light of the foregoing, this Court determines that plaintiff has cured the deficiencies in its initial motion for default and has set forth facts giving rise to the claim.

Therefore, in accordance with the foregoing, it is hereby:

³ Claimant Cheairs did not undergo an EUO.

ORDERED that the motion by plaintiff Hertz Vehicles, LLC is granted; and it is further

ORDERED that plaintiff's motion for leave to enter a default judgment against defaulting defendants Franklin Hospital, North Shore LIJ Medical, P.C., Precision Imaging of New York, P.C., North American Partners in Anesthesia, L.L.P., Nasir Ismail, Lakeisha Hinton, and Keyion Cheairs is granted without opposition to the following extent; and it is further

ORDERED and ADJUDGED that plaintiff has no contractual duty to defaulting defendants Franklin Hospital, North Shore LIJ Medical, P.C., Precision Imaging of New York, P.C., North American Partners in Anesthesia, L.L.P., Nasir Ismail, Lakeisha Hinton, and Keyion Cheairs to defend or indemnify said defaulting defendants under the policy issued by plaintiff in any action or proceeding brought for damages arising out of personal injury or property damage as a result of the alleged accident of August 20, 2014; and it is further

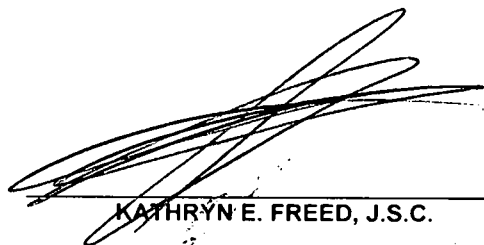
ORDERED and ADJUDGED that plaintiff is not obligated to provide coverage for any claim or honor or pay claims for reimbursement submitted by defaulting defendants Franklin Hospital, North Shore LIJ Medical, P.C., Precision Imaging of New York, P.C., North American Partners in Anesthesia, L.L.P., Nasir Ismail, Lakeisha Hinton, and Keyion Cheairs arising from the alleged accident of August 20, 2014 under New York Insurance Regulation 68; and it is further

ORDERED that the matter is severed and shall proceed against the remaining defendants Jagga Alluri, M.D., Innovative Medical, P.C., Venkatesan Sivaraman, Philip Abessinio, D.C., Carole LM Schuster, and Advanced Orthopedics, P.C.; and it is further

ORDERED that this constitutes the decision and order of the Court.

11/13/2017

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE