

Motor Veh. Acc. Indem. Corp. v Hudson

2017 NY Slip Op 32517(U)

November 28, 2017

Supreme Court, New York County

Docket Number: 451356/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED

PART 2

Justice

-----X

MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

INDEX NO. 451356/2017

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

TRACY E. HUDSON and LIONEL HUDSON,

Defendants.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DEFAULT JUDGMENT

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

Plaintiff Motor Vehicle Accident Indemnification Corporation (“MVAIC”) moves, pursuant to CPLR 3215, for a default judgment against defendants Tracy E. Hudson and Lionel Hudson (collectively “defendants”) to recover the sum of \$11,188.64, plus interest from September 1, 2014, for reimbursement of monies it expended pursuant to Articles 51 and 52 of the New York State Insurance Law (“Insurance Law”). Said monies were expended due to a motor vehicle accident and the resulting claims paid by MVAIC to an injured party, Edeline Fernandez, due to defendants’ failure to carry legally required motor vehicle insurance.

Factual and Procedural Background:

In a July 11, 2017 affidavit of indebtedness submitted in support of the motion Fred Fossett, President of MVAIC, states that, on September 1, 2014, Edeline Fernandez was injured in a motor vehicle accident. Doc. 13, at par. 3.¹ Fernandez's injuries were caused by an uninsured vehicle owned by defendant Tracy E. Hudson and operated by defendant Lionel Hudson. Id. Pursuant to section 5213 of the New York State Insurance Law, MVAIC entered into a settlement with Fernandez in the amount of \$10,000, which sum was paid to the latter on December 1, 2016. Id., at par. 4. MVAIC, in its role as a corporation created pursuant to Article 52 of the Insurance Law, has the statutory responsibility of processing claims and compensating innocent victims of motor vehicle accidents caused by financially irresponsible motorists. Doc. 13, at par. 2. Pursuant to section 5209 of the Insurance Law, MVAIC undertook an investigation which revealed that defendants were liable to MVAIC since the insurance policy on defendant Tracy E. Hudson's car was cancelled as of July 19, 2014. Id., at pars. 5-6. The investigation undertaken by MVAIC cost \$1,188.64. Id., at par. 8.

MVAIC, by its attorney, Robyn S. Drew, Esq., avers that defendants Tracy E. Hudson and Lionel Hudson were served with the summons and complaint on June 9 and June 3, 2017, respectively. Doc. 7, at par. 6; Doc. 11. Defendants were mailed an additional copy of the summons and complaint pursuant to CPLR 3215(g). Doc. 12. Plaintiff's counsel avers that defendants have failed to answer or otherwise appear in this matter. Doc. 7, at par. 6. Therefore, MVAIC asks that its motion for a default judgment be granted against defendants in the sum of \$11,188.64. In support of the motion, MVAIC also submits the summons and complaint (Doc. 11); a statement of the monies allegedly owed to MVAIC (Doc. 14); a non-military affidavit (Doc.

¹ All references are to the documents filed with NYSCEF in connection with this action.

15); the police report of the subject accident (Doc. 16); and a letter of cancellation of defendant Tracy H. Hudson's insurance coverage. Doc. 17.

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.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

In the case at bar, MVAIC has submitted its summons and complaint, along with the affidavits of service relating thereto plus the affidavits of additional mailings and an affidavit of indebtedness containing the facts constituting the claim, and a payment listing of all payments incurred pursuant to the underlying matter establishing that the amount owed by defendants to MVAIC is \$11,188.64, plus interest from September 1, 2014.

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

ORDERED that the motion by the plaintiff Motor Vehicle Accident Indemnification Corporation for a default judgment against defendants Tracy E. Hudson and Lionel Hudson is

granted in the amount of \$11,188.64, plus interest from September 1, 2014, as calculated by the Clerk; and it is further,

ORDERED that plaintiff Motor Vehicle Accident Indemnification Corporation, shall serve a copy of this order on defendants Tracy E. Hudson and Lionel Hudson and the Trial Support Office at 60 Centre Street, Room 158; and it is further,

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

11/28/2017

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

APPLICATION:

CHECK IF APPROPRIATE: