

Motor Veh. Acc. Indem. Corp. v Hudson

2020 NY Slip Op 33987(U)

December 4, 2020

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 IAS MOTION 2EFM

Justice

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INDEX NO. 451356/2017

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION AND ORDER

TRACY E. HUDSON and LIONEL HUDSON,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this action commenced by plaintiff Motor Vehicle Accident Indemnification Corporation ("MVAIC") to recover monies expended pursuant to Article 51 and 52 of the New York State Insurance Law ("Insurance Law"), defendant Tracy E. Hudson ("Hudson") moves, *pro se*, by order to show cause ("OSC"), to vacate a default judgment previously entered by this Court against defendants (Docs. 27-28). MVAIC opposes the application (Docs. 29-40). After oral argument, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

The facts of this matter are set forth in detail in the decision and order of this Court entered December 1, 2017 ("the 12/1/17 order"), which granted MVAIC's motion seeking a default

judgment against defendants in the amount of \$11,188.64, plus interest from September 1, 2014, as calculated by the Clerk (Doc. 19). However, a brief summary of the facts is set forth below.

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. 1) (*see generally Motor Veh. Acc. Indem. Corp. v Hernandez*, 2017 NY Slip Op 32516[U], 2017 NY Misc LEXIS 4621, *2 [Sup Ct, NY County 2017]). Nonparty Edeline Fernandez ("Fernandez") filed a claim with MVAIC in accordance with Article 51 and 52 of the Insurance Law, alleging injuries and damages as a result of a September 2014 motor vehicle collision with another vehicle owned by Hudson and operated by Hudson's son, defendant Lionel Hudson (Doc. 1). Hudson's vehicle was allegedly uninsured at the time of the accident (Doc. 1). In December 2016, Fernandez's claim with MVAIC was settled for \$10,000 (Doc. 1).

In May 2017, MVAIC commenced this action against defendants by filing a summons and complaint (Doc. 1). In its complaint, MVAIC asserted, *inter alia*, that it was entitled to recover the \$10,000 it paid to Fernandez pursuant to the settlement agreement, in addition to \$1,188.64 relating to costs incurred for undertaking a review and investigation of the matter (Doc. 1). Defendants failed to answer or otherwise appear in this action and this Court granted MVAIC's motion for a default judgment against them in the 12/1/17 order (Doc. 19). On December 4, 2017, MVAIC served defendants with the 12/1/17 order, with notice of entry (Doc. 22). On December 13, 2017, a judgment for the total amount of \$14,856.49, including interest, costs and disbursements, was filed with the County Clerk's office (Doc. 26).

In August 2019, Hudson filed the instant application, requesting that the judgment be vacated on the ground that she was never served with process or notified of this action (Doc. 28).

In opposition, MVAIC argues, *inter alia*, that, contrary to Hudson's contention, defendants were properly served pursuant to CPLR 308(4) and that she has otherwise failed to establish a reasonable excuse for her default or the existence of a meritorious defense in this action so as to establish her entitlement to vacatur of the judgment (Doc. 29).

LEGAL CONCLUSIONS:

Pursuant to CPLR 5015(a)(4), "a default *must* be vacated once the movant demonstrates lack of jurisdiction" (*Greenwood Realty Co. v Katz*, 187 AD3d 1153, 1154 [2d Dept 2020] [emphasis added], quoting *Matter of Foreclosure of Tax Liens*, 144 AD3d 1033, 1034 [2d Dept 2016]; see CPLR 5015[a][4]) and, under these circumstances, "neither a reasonable excuse nor a meritorious defense need be demonstrated" (*Eur. Am. Bank v Legum*, 248 AD2d 206, 208 [1st Dept 1998]; see *Ortiz v Santiago*, 303 AD2d 1, 4 [1st Dept 2003]).¹ However, "it is well established that the affidavit of a process server is *prima facie* evidence of proper service" (*Matter of de Sanchez*, 57 AD3d 452, 454 [1st Dept 2008] [emphasis added]; see *Fourth Ave. Owner's Corp. v Goldstein*, 67 Misc 3d 1209[A], 2020 NY Slip Op 50474[U], 2020 NY Misc LEXIS 1566, *2 [Sup Ct, NY County 2020]) and it cannot be rebutted merely by a bare, conclusory denial of service (see *Matter of Pasanella v Quinn*, 126 AD3d 504, 505 [1st Dept 2015]; *De La Barrera v Handler*, 290 AD2d 476, 477 [2d Dept 2002]).

Although Hudson represents that she was "never served [with the summons and complaint] or notified about this case" (Doc. 28), this Court determined in its 12/1/17 order that

¹ Although Hudson does not cite to any specific statute in her OSC as the basis for the relief sought, her argument pertains exclusively to a lack of jurisdiction and is therefore governed by CPLR 5015(a)(4) (see generally *Bryan v Diawara*, 2020 NY Slip Op 30847[U], 2020 N.Y. Misc. LEXIS 1316, *7 [Sup Ct, Kings County 2020]).

defendants were properly served with process since an affidavit of service submitted by MVAIC reflects that Hudson was served by "affix and mail" service after several attempts to serve her personally at her residence and that MVIAC complied with the additional mailing requirements (*see* CPLR 308[4]; *Greenwood Realty Co. v Katz*, 187 AD3d at 1154). There has been no claim, much less a showing, that the address in the affidavit of service was not Hudson's residence. Further, her own affidavit in support of the OSC identifies the same address as her residence and a search of the Department of Motor Vehicles records, as submitted by MVIAC, confirms the same (Docs. 28, 38). Since the instant application is devoid of any facts to rebut MVAIC's showing that Hudson was properly served with the summons and complaint and Hudson only alleges, in conclusory fashion, that service was not effectuated, she has failed to establish her entitlement to vacatur of the judgment pursuant to 5015(a)(4) (*see Ross v Sunrise Home Improvement*, 186 AD3d 633, 634 [2d Dept 2020]; *Ortiz v Santiago*, 303 AD2d at 4-5).

Hudson asserted at oral argument that the accident was caused by a transit cop and that the City of New York ("the City") acknowledged responsibility for the September 2014 accident, as evidenced by the fact that Lionel Hudson was paid by the City in a settlement relating to this accident. This Court afforded Hudson the opportunity to proffer proof of the alleged settlement and she emailed a document entitled "General Release" to this Court and opposing counsel. The document reflects that Lionel Hudson, the claimant named in NYC Comptroller claim number 2015PI001549, was paid \$75,000 by the City in January 2016 in consideration for a full release and settlement in satisfaction for all damages and injuries, including all claims for costs, expenses, attorney's fees and disbursements, relating to his claim.

Even considering this untimely argument, and construing this proof as having been submitted in support of a meritorious defense argument pursuant to CPLR 5015(a)(1), there is no

basis on which to vacate the judgment because this Court is unable to ascertain from this document whether this release and settlement relates to the same September 2014 incident and Hudson has failed to provide any additional proof regarding the details of Lionel Hudson's claim. Assuming, *arguendo*, that there was a potentially meritorious defense, Hudson has nevertheless failed to establish a reasonable excuse for her default (*see Bontemps v Aude Constr. Corp.*, 98 AD3d 1071, 1072 [2d Dept 2012]; *Burnett v Renne*, 32 AD3d 449, 450 [2d Dept 2006]). Thus, the application is denied.

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

ORDERED that the motion by defendant Tracy E. Hudson, seeking to vacate the judgment rendered by this Court on December 1, 2017 is denied; and it is further

ORDERED that, within 20 days after this decision and order is uploaded to NYSCEF, plaintiff Motor Vehicle Accident Indemnification Corporation shall serve a copy of this decision and order, with notice of entry, upon all parties; and it is further

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

12/4/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

KATHRYN E. FREED, J.S.C.