

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26318
G/ct

_____AD3d_____

Argued - November 23, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-07463

DECISION & ORDER

New South Insurance Company, appellant,
v James Dobbins, Sr., et al., defendants, James
Dobbins, Jr., et al., respondents.

(Index No. 05432/07)

McDonnell & Adels, PLLC, Garden City, N.Y. (Korri Abrams Frampton and Martha
S. Henley of counsel), for appellant.

In an action, inter alia, for a judgment declaring that the plaintiff is not obligated to provide insurance coverage in connection with a vehicular accident that occurred on July 31, 2006, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (Winslow, J.), entered July 23, 2008, as, upon renewal and reargument, adhered to a prior determination in an order dated November 21, 2007, denying that branch of its motion which was for leave to enter judgment against the defendants James Dobbins, Jr., and Felita Dobbins, upon their default in answering the complaint.

ORDERED that the order entered July 23, 2008, is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court properly, upon renewal and reargument, adhered to so much of its original determination as denied the plaintiff leave to enter judgment against the defendants James Dobbins, Jr., and Felita Dobbins, upon their default in answering the complaint. In support of its motion, the plaintiff offered the complaint, which was verified by plaintiff's counsel, and an affidavit of the plaintiff's investigator, neither of whom possessed personal knowledge of the facts constituting

March 2, 2010

NEW SOUTH INSURANCE COMPANY v DOBBINS

Page 1.

the claim (see CPLR 3215; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71; *Hosten v Oladapo*, 44 AD3d 1006; *Finnegan v Sheahan*, 269 AD2d 491). The statements from the driver of the other vehicle that the plaintiff's investigator relied upon in his affidavit constituted inadmissible hearsay (see CPLR 4518[a]; *Hochhauser v Electric Ins. Co.*, 46 AD3d 174, 179-183; *Metropolitan Cas. Ins. Co. v Shaid*, 23 Misc 3d 1140[A]). Accordingly, entry of a default judgment against these defendants was properly denied on the papers before the Supreme Court.

MASTRO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court