

Commissioners of the State Ins. Fund v Yildirim

2011 NY Slip Op 30381(U)

February 15, 2011

Supreme Court, New York County

Docket Number: 402806/2008

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE
J.S.C.

PART 10

Index Number : 402806/2008

STATE INSURANCE FUND

vs

YILDIRIM, MUHARREN

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

FEB 17 2011

Upon the foregoing papers, it is ordered that this motion

NEW YORK
COUNTY CLERK'S OFFICE

*Motion granted per annexed
decision + order.*

Dated: 2/15/11


HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----x
THE COMMISSIONERS OF THE STATE
INSURANCE FUND,

Plaintiff,

-against-

Muharren Yildirim, Selim Yalcin and
Ride Construction, Inc.

Defendants.

DECISION/ ORDER

Index No.: 402806/2008

Seq. No.: 001

PRESENT:

Hon. Judith J. Gische

FILED

FEB 17 2011

-----x
Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

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COUNTY CLERK'S OFFICE

Papers

Numbered

Pltf's n/m [§ 3212] w/JIG affirm, exhs 1

Upon the foregoing papers, the decision and order of the court is as follows:

This is plaintiff's motion for: [1] summary judgment against defendant Ride Construction Inc. ("Ride") on the first cause of action and [2] an order striking the answer of and entering judgment against defendants Yildirim and Yalcin on the Second, Third, Fourth and Fifth causes of action. Plaintiff is the State Insurance Fund [sometimes "SIF"], a New York State agency that provides worker's compensation and disability insurance for its customers, charging premiums and fees for its services.

Although plaintiff has filed proof of service of this motion on defendants attorney, no opposition has been interposed. Issue, however, was joined and on or about December 20, 2008, the defendants interposed a joint answer to the complaint. Since issue has been

joined, that part of the motion seeking summary judgment may be heard, and it will be considered on default. CPLR § 3212. Likewise the motion for discovery sanctions is submitted and considered by the court on default.

Discussion

The first cause of action is against Ride and seeks collection costs under State Finance Law §18(5). To the extent summary judgment is sought, plaintiff bears the initial burden of setting forth evidentiary facts to prove its *prima facie* case that would entitle it to judgment in its favor, without the need for a trial. CPLR § 3212; Winegrad v. NYU Medical Center, 64 N.Y.2d 851 (1st Dept. 1985); Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1st Dept. 1980). Since the motion is submitted without opposition, plaintiff is entitled to summary judgment provided it has established the *prima facie* elements of its cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3d Dept. 2001).

In support of its motion, plaintiff has provided a judgment from an action entitled State Insurance Fund v. Ride Construction, Inc. (NY Co. Index # 401619/04). The judgment was obtained in an action for unpaid insurance premiums. The judgment reflected a recovery of \$36,741.84 plus interest and costs and disbursements for a total amount of \$41,130.29. State Finance Law §18(5) permits the SIF to collect its collection costs, including reasonable attorneys fees, not to exceed 22% of the amount for which recovery is sought. SIF seeks \$6,613,53 which is 18% of the \$36,7841.84 sought and obtained in 204 action. SIF is entitled to summary judgment on the first cause of action against Ride.

SIF has also asserted claims against the individual defendants, claiming that they fraudulently transferred the assets of Ride to themselves, thereby rendering ride insolvent and frustrating enforcement of the judgment. During Yildirim's deposition in the prior action

SIF learned that Ride had received at least \$109,000 in settlement of claim against a third party, Hi-Tech, the proceeds of which were converted to cash, with no documentation of how and to who distributed. SIF then commenced this action with claims against the individual defendants. On May 20, 2010 plaintiff served interrogatories and a Notice for Discovery and Inspection. A May 20, 2010 compliance conference order gave defendants until July 16, 2010. Defendants failed to respond. A September 16, 2010 compliance conference order extended defendants time to answer the Notice for Discovery and Inspection until October 7, 2010. No answer to either the Notice for Discovery and Inspection or the Interrogatories has ever been interposed. Defendants counsel ignored plaintiff's attorney's phone call to obtain discovery compliance.

Given how serious the claims are, the recalcitrance of the defendants in providing any discovery whatsoever, cannot be viewed as anything but deliberate. The most serious discovery sanctions are warranted in this case. Accordingly, the answers of defendants Yildirim and Yalcin are stricken and on the second through fifth causes of action SIF is entitled to a judgment against them for \$41,130.29 plus interest from November 19, 2004. This amount represents the value of the judgment obtained in the prior action which has been frustrated by defendants actions to render Ride insolvent.

Conclusion

It is hereby

ORDERED that plaintiff, The Commissioners of the State Insurance Fund's, motion for summary judgment against defendant, Ride Construction, Inc., is hereby granted on default; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff The Commissioners

* 5]
of the State Insurance Fund, against defendant, Ride Construction, Inc., in the sum of:
\$6,613.53, representing collection costs pursuant to State Finance Law §18 [5]; plus the
costs and disbursements of this action; and it is further

ORDERED that plaintiff, The Commissioners of the State Insurance Fund's, motion for
sanctions a judgment against defendants Muharren Yildirim and Selim Yalcin is granted to
the extent of striking their answer and entering a default judgment against each of them jointly
and severally in the amount of \$41,130.29 plus interest at the statutory rate from November
19, 2004 until the date of entry of judgment, and it is further

ORDERED that Clerk shall enter judgment in favor of plaintiff The Commissioners of
the State Insurance Fund, against defendants Muharren Yildirim and Selim Yalcin in the
sum of: \$41,130.29 plus interest at the statutory rate from November 19, 2004 until the
date of entry of judgment plus the costs and disbursements of this action; and it is further

ORDERED that any requested relief not expressly granted herein is denied and that this
shall constitute the decision and order of the court.

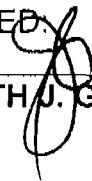
ORDERED that plaintiff's motion for summary judgment striking and dismissing
defendant's affirmative defenses is granted and the answer is dismissed.

Any relief not expressly addressed herein has nonetheless considered by the court
and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
February 15, 2011

SO ORDERED:



HON. JUDITH J. GISCHE, J.S.C.

FILED

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