

DTG Operations, Inc. v Compass Med., P.C.
2011 NY Slip Op 31605(U)
June 15, 2011
Sup Ct, NY County
Docket Number: 110921/10
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE
Justice

PART 10

STG OPERATIONS, INC.
et al
-v-
Compass Medical, PC
et al

INDEX NO. 110921/10
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 _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/15/11

[Signature]
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
Country of New York: Part 10

-----X
DTG OPERATIONS, INC. d/b/a DOLLAR RENT
A CAR.,

Plaintiff,

-against-

COMPAS MEDICAL, P.C., T & J CHIROPRACTIC, P.C.,
CHARLES DENG ACUPUNCTURE, P.C., NATURAL
THERAPY ACUPUNCTURE, P.C., GREAT HEALTH CARE
CHIRPORACTIC, P.C., UNLIMITED PRODUCTS, LTD.,
DELTA DIAGNOSTIC RADIOLOGY, P.C., SEACOAST
MEDICAL, P.C., PROFESSIONAL HEALTH IMAGING, P.C.,
ANTHONY JACKSON, RASHEED JAMAL PACE, and
CRYSTAL MCMILLAN

Defendants.
-----X

DECISION/ORDER
Index No.: 110921/10
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische
J.S.C.

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141B).

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

Papers	Numbered
Pltf's n/m (3215) w/JE affirm, BC affid, exhs	1

-----X

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

GISCHE J.:

This is an action by plaintiff, DTG Operations, Inc. d/b/a Dollar Rent-A-Car
("Dollar") for a judgment declaring that Dollar owes no duty to pay any of the No-Fault
claims filed by the defendants in connection with a collision that took place on January
18, 2010 ("accident"). In accordance with this court's prior ruling on May 19, 2011,
defendants were given an additional 10 days to answer. Decision/Order, Hon. Judith J
Gische, 5/19/11. Although Compas Medical, P.C., T&J Chiropractic, P.C., Charles Deng

Acupuncture, P.C., Natural Therapy Acupuncture, P.C., Great Health Care Chiropractic, P.C., and Delta Diagnostic Radiology, P.C., have answered the complaint, the remaining defendants, Unlimited Products, LTD., Seacoast Medical P.C., Professional Health Imaging P.C., ("defaulting corporate defendants") and Anthony Jackson ("Jackson"), Rasheed Jamal Pace ("Pace"), and Crystal McMillan ("McMillan") (collectively "individual defendants") have failed to answer.

Dollar has filed proof of service of the summons and complaint on the defaulting corporate defendants. The defaulting corporate defendants are all domestic corporations, and each was served through the Secretary of State. BCL § 306(b). Diligent attempts were made to personally serve each of the individual defendants. CPLR § 308(1). Since the attempts were unsuccessful, Dollar served Jackson by serving a copy of the summons and complaint on Tanya Jackson, a relative and a person of suitable age and discretion, at the defendant's last known residence, on August 27, 2010. CPLR § 308(2). Dollar served Pace by serving a copy of the summons and complaint on Pace's co-tenant, a person of suitable age and discretion, at the defendant's last known residence, on August 28, 2010. CPLR § 308(2). Dollar served McMillan by serving a copy of the summons and complaint on her mother, a person of suitable age and discretion, at the defendant's last known residence, on October 29, 2010. Service was complete with the mailing of the summons and complaint to Jackson and Pace on September 3, 2010, and to McMillan on November 9, 2010. CPLR § 308(2).

Dollar has complied with the additional notice requirements of CPLR §§ 3215(g)(3)(i), (4)(i) and BCL § 306(b) by mailing a copy of the summons and complaint

to each defendant at least 20 days before seeking entry of a default judgment. Despite such notice and additional notice, this motion is submitted to the court unopposed. None of the defendants remaining in this action have answered the complaint or appeared and their time to do so has expired and not been further extended by the court.

Therefore, this motion will be considered on default.

A default in answering the complaint is deemed to be an admission of all factual allegations contained in the complaint and all reasonable inferences that flow from them (Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62 [2003]). Therefore, Dollar is entitled to the relief sought in its complaint, which is supported by the sworn affidavit of Barbara Campbell ("Campbell"), a claims representative for Dollar, provided plaintiff sets forth its *prima facie* case. Gagen v. Kipany Productions Ltd., 289 A.D. 2d 844 (3d Dept. 2001).

The individual defendants were occupants of a car owned and self-insured by Dollar on the date of the accident ("Dollar vehicle"). Pace was driving the Dollar vehicle, and Jackson and McMillan were passengers. According to the police report, Pace stated that while stopped at a stop sign, he became distracted while checking his rearview mirror and hit the vehicle in front of him. Following the accident, Dollar received medical claims for the individual defendants in excess of \$25,000, arising from alleged injuries from the accident.

Dollar has asserted four causes of action against the defendants. They are: for a declaration that the defendants have no right to collect No-Fault benefits with respect to the accident (1st COA); for a declaration that Dollar owes no duty to pay No-Fault claims to defendants because the alleged injuries of the defendants and subsequent No-Fault treatment submitted by the medical provider defendants were not causally related to the

accident (2nd COA); for a declaration that the defendants have no standing to recover No-Fault benefits with respect to the accident (3rd COA); and for a temporary stay on all No-Fault arbitrations, lawsuits, and/or claims, pending the outcome of this action (4th COA).

Although Dollar notified the individual defendants they had to appear for physical Examinations Under Oath (“EUO’s”), as required under their insurance contract, none of them appeared. Dollar has provided proof that the individual defendants were each notified of these appointments. Dollar claims over \$25,000 in no-fault claims have been submitted by the medical providers, which is disproportionate to the accident alleged and raises questions as to the claims’ legitimacy. Campbell contends there was minor damage at the collision scene, yet the individual defendants were treated “heavily” and received “elaborate and nearly identical courses of treatment at the same facilities.”

The individual defendants have not come forward with any explanation for why they did not provide the information demanded or appear for their EUO’s, as required. Having failed to refute plaintiff’s claims, the court finds that the defaulting corporate defendants and the individual defendants are not able to prove entitlement to benefits under the insurance policy. Accordingly, plaintiff’s 1st and 2nd causes of action are granted on default against these defendants only.

In its 3rd claim against the defendants, Dollar claims the defendants have no standing to recover for their injuries resulting from the accident, however, this claim is not supported by any facts, nor does the plaintiff articulate what it means.

Dollar’s 4th cause of action seeks a temporary stay of all No-Fault lawsuits and arbitrations brought by the defendants pending the outcome of this action relating to the

accident. This issue of temporary relief is moot, based on the court's decision as to Dollar's other causes of action.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff, DTG OPERATIONS, INC. d/b/a DOLLAR RENT A CAR's motion for entry of a default judgment against defendants, UNLIMITED PRODUCTS, LTD., SEACOAST MEDICAL P.C., PROFESSIONAL HEALTH IMAGING P.C., ANTHONY JACKSON, RASHEED JAMAL PACE, and CRYSTAL MCMILLAN is GRANTED on default against these defendants only; and it is further

ORDERED ADJUDGED AND DECLARED that plaintiff owes no duty to pay No-Fault claims to defendants, UNLIMITED PRODUCTS, LTD., SEACOAST MEDICAL P.C., PROFESSIONAL HEALTH IMAGING P.C., ANTHONY JACKSON, RASHEED JAMAL PACE, and CRYSTAL MCMILLAN, with respect to the January 18, 2010 collision under claim number DTZ072170; and it is further

ORDERED that plaintiff's motion for a declaration on its 3rd cause of action, that defendants, UNLIMITED PRODUCTS, LTD., SEACOAST MEDICAL P.C., PROFESSIONAL HEALTH IMAGING P.C., ANTHONY JACKSON, RASHEED JAMAL PACE, and CRYSTAL MCMILLAN, have no standing to recover for injuries resulting from the accident, is severed and dismissed without prejudice, since this claim is not supported by any facts; and it is further

ORDERED that plaintiff's 4th cause of action is dismissed against UNLIMITED PRODUCTS, LTD., SEACOAST MEDICAL P.C., PROFESSIONAL HEALTH IMAGING P.C.,

ANTHONY JACKSON, RASHEED JAMAL PACE, and CRYSTAL MCMILLAN as moot; and it is further

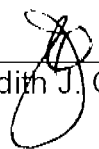
ORDERED that a **preliminary conference** previously scheduled for **July 7, 2011 at 9:30 a.m.** with all remaining defendants is still scheduled; and it is further

ORDERED that any requested relief not expressly addressed herein has nonetheless been considered by the Court and is hereby denied; and it is further

ORDERED that this constitutes the decision, order and Judgment of the court.

Dated; New York, New York
 June 15, 2011

So Ordered:



Hon. Judith J. Gische, J.S.C.

UNFILED JUDGMENT

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