

Hertz Corp. v Provvedere, Inc.

2011 NY Slip Op 32025(U)

July 19, 2011

Supreme Court, New York County

Docket Number: 113053/10

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHÉ
Justice

PART 0

Index Number : 113053/2010
HERTZ CORPORATION
VS.
PROVVEDERE, INC. ET AL
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED _____

notice of motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

FILED

JUL 20 2011

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

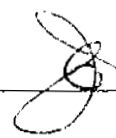
NEW YORK
COUNTY CLERK'S OFFICE

THE ACCOMPANYING MEMORANDUM DECISION.

THE ACCOMPANYING MEMORANDUM DECISION.

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

Dated: 7/19/11


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

THE HERTZ CORPORATION,
Plaintiff,

-against-

PROVEDERE, INC., PAUL BECK, M.D., P.C.,
ZSA MEDICAL CARE, P.C., A.H. PHYSICAL
THERAPY, P.C., CAREGIVER CHIROPRACTIC, P.C.,
SANLI ACUPUNCTURE, P.C., SER SANO, INC.,
KEYONI COOPER and LACAMERON JOHNSON,

Defendants.
-----x

DECISION/ORDER
Index No.: 113053/10
Seq. No.: 001

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

FILED

JUL 20 2011

NEW YORK
COUNTY CLERK'S OFFICE

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/JRD affirm, RK affid, exhs	1
Stip of settlement (5/25/11)	2

-----x

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

GISCHE J.:

This is an action by plaintiff, Hertz Corporation ("Hertz"), for a judgment declaring that Hertz owes no duty to pay any of the No-Fault claims filed by the defendants in connection with a collision that took place on December 16, 2009 ("accident"). A Stipulation of withdrawal has been submitted withdrawing plaintiff's claims against defendant Paul Beck, M.D. Therefore, the claims against that defendant are severed and dismissed. The motion insofar as it seeks relief against Dr. Beck is settled per stipulation.

Hertz has filed proof of service on each domestic corporate defendant. Each was served through the Secretary of State. BCL § 306(b). Diligent attempts were made to personally serve each of the individually named defendants, Keyoni Cooper (“Cooper”) and Lacameron Johnson (“Johnson”) (collectively “individual defendants”). CPLR § 308(1). Since the attempts were unsuccessful, Hertz served Johnson by affixing a copy of the summons and complaint to the door of her last known residence on January 5, 2011. CPLR § 308(4). Hertz served Cooper by delivering a true copy of the summons and complaint on Jane Cooper, a relative and a person of suitable age and discretion, at the defendant’s last known residence, on November 13, 2010. CPLR § 308(2). Service was complete with the mailing of the summons and complaint to the last known address of Johnson on January 13, 2011, and to the last known addresses of Cooper on November 19, 2010. CPLR §§ 308(2), (4).

Hertz 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 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, Hertz is entitled to the relief sought in its complaint, which is supported by the sworn affidavit of Robert

Kelly ("Kelly"), the Director of the Special Investigations Unit for Hertz, 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 Hertz when it collided with another vehicle on Bay Boulevard in Hempstead, New York. According to the police report, Cooper, the driver of Hertz vehicle, stated that the accident occurred when her "foot slipped off of the pedal, causing her to strike" the other vehicle. The individual defendants claimed to have sustained bodily injuries as a result of the accident. Subsequently, Hertz has received medical claims for these individuals for tens of thousands of dollars, arising from alleged injuries from the accident.

Hertz has asserted three causes of action. They are: for a declaration that Hertz owes no duty to pay No-Faults claims to defendants because the claimants failed to cooperate with the properly scheduled EUOs, (1st COA); for a declaration that Hertz owes no duty to pay No-Fault claims to defendants because the collision was intentionally staged by claimants for purpose of fraudulently procuring coverage (2nd COA); for a declaration that Hertz is entitled to a judgment declaring a temporary stay of all arbitrations, lawsuits and/or claims by defendants relating to No-Fault claims of the claimants arising from the collision (3rd COA).

Hertz sought verification of the defendants' claims by requesting Examinations Under Oath ("EUO's"), as required under their insurance contract. Although Hertz notified the individual claimants they had to appear for these "EUO's," none of them appeared. Hertz has provided proof that the individual claimants were each notified of these appointments.

Hertz claims thousands of dollars 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. The police report indicates that the cost of repairs to either vehicle was less than \$1,000. The police report also indicates that nobody was injured, and that both vehicles were driven away from the scene by their operators.

The individual claimants 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 claimants 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.

Hertz's 3rd 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 Hertz's other causes of action.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff, THE HERTZ CORPORATION, INC.'s motion for entry of a default judgment against defendants, PROVVEDERE, INC., ZSA MEDICAL CARE, P.C., A.H. PHYSICAL THERAPY, P.C., CAREGIVER CHIROPRACTIC, P.C., SANLI ACUPUNCTURE, P.C., SER SANO, INC., KEYONI COOPER and LACAMERON JOHNSON is GRANTED on default; and it is further

ORDERED ADJUDGED AND DECLARED that plaintiff owes no duty to defendants, PROVVEDERE, INC., ZSA MEDICAL CARE, P.C., A.H. PHYSICAL THERAPY, P.C.,

CAREGIVER CHIROPRACTIC, P.C., SANLI ACUPUNCTURE, P.C., SER SANO, INC., KEYONI COOPER and LACAMERON JOHNSON is GRANTED to pay No-Fault claims with respect to the December 16, 2009 collision under claim number 02-2010-388; and it is further

ORDERED that plaintiff's 3rd cause of action is dismissed as moot; and it is further

ORDERED that the claims against defendant Dr. Beck are hereby severed and dismissed in accordance with the stipulation dated May 25, 2011, providing that plaintiff has withdrawn its claim against that defendant.

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
July 19, 2011

So Ordered:



Hon. Judith U. Gische, JSC

FILED

JUL 20 2011

NEW YORK
COUNTY CLERK'S OFFICE