

DTG Operations, Inc. v Sorrel Acupuncture, P.C.

2011 NY Slip Op 32697(U)

April 14, 2011

Supreme Court, New York County

Docket Number: 107907/2010

Judge: Lucy Billings

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

PRESENT: _____
Justice

PART 46

Index Number : 107907/2010
DTG OPERATIONS, INC.
vs.
SORREL ACUPUNCTURE, P.C.
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

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

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

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Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *and* adjudged that:

The court grants plaintiff's motion for a declaratory judgment on default against all defendants, without opposition, pursuant to the accompanying decision. C.P.L.R. §§ 3001, 3215. The clerk shall enter that judgment forthwith.

FILED

OCT 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/14/11

Lmy Dillings

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
COUNTY OF NEW YORK: PART 46

-----X

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

Index No. 107907/2010

Plaintiff

- against -

DECISION AND ORDER

SORREL ACUPUNCTURE, P.C., M. SADEES
M.D., P.C., COMPREHENSIVE
PSYCHOLOGICAL EVALUATION, P.C.,
FLATBUSH MEDICAL CARE, P.C., G A
PHYSICAL THERAPY, P.C., INFINITY
CHIROPRACTIC HEALTH P.C., SHORE
ACUPUNCTURE, P.C., U&R CITY SUPPLIES,
INC. d/b/a U&R CITY SUPPLY, INC.,
AMERICAN CHIROPRACTIC CARE, P.C.,
J.K.M. MEDICAL CARE, P.C., GLORY
PHYSICAL THERAPY, P.C., I.A.V. MEDICAL
SUPPLY, INC., HEALING HEALTH PRODUCTS,
INC., NEW YORK DIAGNOSTIC MEDICAL
CARE, P.C., LATISHA LEWIS, and LATISHA
MASSIE,

FILED

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Defendants

-----X

LUCY BILLINGS, J.S.C.:

Plaintiff seeks a judgment declaring that plaintiff owes no
duty to compensate defendants pursuant to New York Insurance Law
§ 5103 for expenses incurred from a collision October 20, 2009,
in Queens County, between a motor vehicle owned by plaintiff and
operated by defendant Massie, in which defendant Lewis was a

passenger, and another motor vehicle. Plaintiff moves for a default judgment against defendants. C.P.L.R. § 3215(e). Although plaintiff served the summons and complaint on the corporate defendants July 16, 2010, mailed them the required second copies, C.P.L.R. § 3215(g)(4), and served the summons and complaint on defendant Lewis July 17, 2010, and on defendant Massie July 24, 2010, defendants failed to answer.

While plaintiff and the individual defendants did not execute any contract between them, a statutory duty obligates plaintiff to compensate the individual defendants for expenses due to a motor vehicle collision. N.Y. Ins. Law § 5103(a); 11 N.Y.C.R.R. § 65-2.2(a); M.N. Diagnostics, P.C. v. New York Tr. Auth., 82 A.D.3d 409, 410 (1st Dep't 2011). Plaintiff's witness attests that the corporate defendants submitted claims for medical diagnostic and treatment expenses due to the October 2009 collision, as assignees of the individual defendants' statutory rights to compensation. See Fair Price Med. Supply Corp. v. Travelers Indem. Co., 10 N.Y.3d 556, 563 (2008); Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312, 317 (2007). As assignees, these defendants may claim compensation only to the extent that the assignor individual defendants are entitled to compensation. Matter of International

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Ribbon Mills, 36 N.Y.2d 121, 126 (1975); Madison Liquidity Invs. 119, LLC v. Griffith, 57 A.D.3d 438, 440 (1st Dep't 2008); Condren, Walker & Co. v. Portnoy, 48 A.D.3d 331 (1st Dep't 2008); Trisingh Enters. v. Kessler, 249 A.D.2d 45, 46 (1st Dep't 1998).

Plaintiff's witness also attests that plaintiff notified the individual defendants of requested examinations under oath, substantiated by the notices themselves, and that these defendants did not appear for the examinations. These defendants' noncooperation constitutes a failure of a condition precedent to compensation for the motor vehicle collision to any parties potentially entitled to compensation under Insurance Law § 5103(a) or their assignees. N.Y. Ins. Law § 5103(a); 11 N.Y.C.R.R. § 65-2.4(c)(2). See Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d 559, 560 (1st Dep't 2011); Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720, 721 (2d Dep't 2006).

Consequently, the court grants plaintiff's motion for a default judgment against all defendants. C.P.L.R. § 3215; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d 360, 361 (1st Dep't 2002); Utica First Ins. Co. v. Santagata, 66 A.D.3d 876, 878 (2d Dep't 2009); Lancer Ins. Co. v. Whitfield, 61 A.D.3d 724, 725 (2d Dep't 2009); Travelers Indem. Co. of Am. v. Pullini Water Servs.,

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Inc., 35 A.D.3d 846, 847 (2d Dep't 2006). The court adjudges and declares that plaintiff is not obligated to compensate defendants for expenses related to the collision October 20, 2009. C.P.L.R. § 3001; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d at 361-62; Travelers Indem. Co. of Am. v. Pullini Water Servs., Inc., 35 A.D.3d at 846-47. See Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d at 560. This decision constitutes the court's order and judgment.

DATED: April 14, 2011

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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