

Hertz Vehicles, LLC v Alpha Med. Supplies, P.C.

2014 NY Slip Op 30227(U)

January 23, 2014

Sup Ct, New York County

Docket Number: 154120/12

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: Justice

PART 61

Index Number : 154120/2012
HERTZ VEHICLES, LLC
vs.
ALPHA MEDICAL SUPPLIES, P.C.
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to 3, were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion.

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 1/23/2014

[Signature], J.S.C.

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

HERTZ VEHICLES, LLC,

Plaintiff,

-against-

ALPHA MEDICAL SUPPLIES, P.C., et al.,

Defendant.

-----X

DECISION AND
ORDER

Index No.
154120/12

HON. ANIL C. SINGH, J.:

Plaintiff in this no-fault insurance action moves pursuant to CPLR 3212 for summary judgment declaring that there is no coverage for the claims of defendant Alfa Medical Supplies, P.C. (“Alfa”), contending that Alfa failed to appear for properly scheduled examinations under oath. Alfa opposes the motion.

Defendants Clive Bryant and Keith Sumpter were the occupants of a Nissan automobile, owned by plaintiff Hertz Vehicles, LLC (“Hertz”), which allegedly collided with a vehicle on March 29, 2011, near 506 East 46th Street in Brooklyn. Bryant and Sumpter filed claims against Hertz, which is self-insured. Defendant Alfa is the assignee of Clive Bryant.

Plaintiff exhibits the sworn affidavit of Robert Kelly, who states that he is the Director of the Special Investigations Unit for Hertz. Mr. Kelly states that Alfa

failed to appear for EUOs on two separate occasions. Although claimant Clive Bryant appeared for his EUO, Kelly asserts that Bryant's EUO raised issues as to the legitimacy and need for his purported medical treatment. In his EUO, Bryant was unsure of any actual names of the equipment and could give only nondescript answers for the items he received. In addition, he denied ever receiving a whirlpool or a bathtub and also denied receiving any items for electrical stimulation. Alfa submitted bills for such devices.

In addition, plaintiff exhibits three letters under the signature of Joseph Federici to Alfa dated July 6, 2011, August 12, 2011, and September 16, 2011. An affidavit of service is annexed to each letter. The letters direct Alfa to produce a principal of Alfa for EUOs on July 26, 2011, August 26, 2011, and September 30, 2011.

Joseph Federici, an associate of the firm Rubin, Fiorella & Friedman LLP, states in an affirmation that Alfa failed to appear for the EUOs that were scheduled for July 26, 2011, and August 26, 2011. However, Mr. Federici does not state whether Alfa failed to appear for the EUO noticed for September 30, 2011.

In addition, plaintiff exhibits the sworn affidavit of Clive Bryant, the driver of the vehicle. He contends that, just after the accident, an unidentified man who he did not know approached him at the collision scene and told him that he should go to

Utica Medical for treatment. There, he received physical therapy, acupuncture, and chiropractic treatment for about three weeks, even though he told them that he felt fine.

In opposition, counsel for Alfa points out that the denials of defendant's bills are dated September 20, 2011, which is ten days in advance of the September 30, 2011 EUO. Alfa contends that, as defendant would necessarily have received the denials in advance of the final EUO date, it would not have had a reason to attend the EUO, as payment of its bills had already been denied. Alfa also questions Bryant's credibility based on the statement made during his EUO that he had been incarcerated for possession of a controlled substance and a firearm. Finally, Alfa asserts that plaintiff has not set forth any rationale which supports the need for an EUO.

In reply, plaintiff asserts that the third EUO scheduling letter was sent "inadvertently and has no bearing on the validity of plaintiff's denials."

The appearance of a provider at a duly requested EUO is a condition precedent to an insurer's liability on a policy (11 NYCRR 65-1.1). Defendant does not claim to have responded in any way to the EUO requests. Therefore, defendant's complaints regarding the EUO requests will not now be heard.

The Court finds that plaintiff satisfied its prima facie burden on summary

judgment of establishing that it requested EUOs in accordance with the procedures and time-frames set forth in the no-fault implementing regulations, and that the provider did not appear. We find further that defendant failed to raise an issue of fact that the requests were unreasonable.

Accordingly, it is

ORDERED that plaintiff Hertz Vehicles LLC's motion for summary judgment against defendant Alpha Medical Supplies, P.C. is granted; and it is further

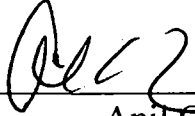
ORDERED, ADJUDGED and DECLARED that the defendant Alpha Medical Supplies, P.C. is not entitled to no-fault coverage, from plaintiff Hertz Vehicles, LLC, for the motor vehicle accident that occurred on March 29, 2011; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that, within 30 days of entry, plaintiff shall serve upon defendant Alpha Medical Supplies, P.C. a copy of this decision and order, together with notice of entry.

The above constitutes the decision and order of the Court.

Date: 1/23/14
New York, New York


Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE