

Hertz Corp. v Cleophat
2014 NY Slip Op 31411(U)
May 28, 2014
Supreme Court, New York County
Docket Number: 114027/11
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

HERTZ CORPORATION and any and all of its subsidiaries and affiliates,

Index No.: 114027/11

Motion Date: 03/22/13

Plaintiffs,

Motion Seq. No.: 002

- v -

CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND, as assignors, and ADVANTAGE RADIOLOGY, PC, COMPREHENSIVE PSYCHOLOGICAL EVALUATION, PC, COMPREHENSIVE PSYCHOLOGICAL EVALUATION, PC, FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC, LIVING WELL CHIROPRACTIC, PC, METROPOLITAN MEDICAL & SURGICAL, PC, NEW AGE, NY UNIVERSAL MEDICAL, PC, ORTHPLUS PRODUCTS, INC, REHABXPRESS PT, PC and RM PHYSICAL THERAPY, PLLC,

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 14B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

The following papers, numbered 1 to 4 were read on this motion for default judgment and for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED
1, 2
3
4

Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiff HERTZ CORPORATION, self insured, in this declaratory judgment action moves for a default judgment for the relief demanded in the Complaint pursuant to CPLR 3215 based upon

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SETTLE/SUBMIT ORDER/JUDG.

the failure to provide duly scheduled "Examinations Under Oath" of defendants CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND, individuals who assigned to certain medical/health care providers their rights to be reimbursed for benefits under the No-Fault laws for the expenses of treatment for injuries suffered in an automobile accident on June 2, 2011.

Plaintiff has submitted proof of service of the summons and complaint and proof of service of this motion upon defendants CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND. Defendants CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND have defaulted in appearance on this motion. Plaintiff has further submitted an affidavit of facts pursuant to CPLR 3215 (f), as well as evidence of the default of defendants by attorney affirmation. Plaintiff has also submitted proof of the additional mailings of the summons required by CPLR 3215(g)(4). This motion is brought within one year of the default. The court shall therefore grant a declaratory judgment on default against defendants CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND for the relief sought in the Complaint.

Plaintiff HERTZ CORPORATION, self insured, in this declaratory judgment action also moves for a summary judgment, pursuant to CPLR 3212, for the relief demanded in the Complaint against defendants FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC, medical/health care companies, who

were assigned the rights of reimbursement of defendants assignors CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND, based upon the failure of defendants assignors to provide duly scheduled Examinations Under Oath.

As held by the First Department in Unitrin Advantage Ins Co v Bayshore Physical Therapy, 82 AD3d 559, 560 (1st Dept 2011):

The failure to appear for [EUOs] requested by the insurer "... as ... may reasonably [be] require[d]" (Insurance Department Regulations [11 NYCRR] § 65-1.1) is a breach of a condition precedent to coverage under the no-fault policy, and therefore fits squarely within the exception to the preclusion doctrine, as set forth in *Central Gen. Hosp. v Chubb Group of Ins. Cos.* (90 NY2d 195 [1997]).

As in Unitrin, here "plaintiff has 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 defendants' assignors did not appear. In opposition, defendants failed to raise an issue of fact that the requests were unreasonable".

Accordingly, it is

ORDERED and ADJUDGED that plaintiff's motion for a default judgment against defendants CASSANDRE CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND is GRANTED on default; and it is further

ORDERED, ADJUDGED and DECLARED that defendants CASSANDRE

[* 4]

CLEOPHAT, MARIE GERVAIS and CLIFFORD EDMOND are not eligible injured persons entitled to no-fault benefits under Claim No.: 02-2011-14480-NS; and that plaintiff HERTZ COMPANY has no duty to honor or pay claims for reimbursement under Claim No.: 02-2011-14480-NS and that plaintiff HERTZ COMPANY is not obligated to honor or pay claims for reimbursement as assignees of FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC and that the defaulting defendants have no rights with respect to the alleged accident of June 2, 2011 involving them; and it is further

ORDERED and ADJUDGED that plaintiff's motion for a summary judgment against defendants FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC is GRANTED; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiff HERTZ COMPANY has no duty to honor or pay claims for reimbursement under Claim No.: 02-2011-14480-NS and that plaintiff HERTZ COMPANY is not obligated to honor or pay claims for reimbursement as assignees of FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC and that the defendants FIVE BORO PSYCHOLOGICAL and LICENSED MASTER SOCIAL WORK SERVICES, PLLC have no rights with respect to the alleged accident of June 2, 2011 involving

defendants assignors.

This is the decision and order of the court.

Dated: May 28, 2014

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

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