

**Hertz Vehs., LLC v Adex Physical Therapy, P.C.**

2017 NY Slip Op 30425(U)

March 2, 2017

Supreme Court, New York County

Docket Number: 160598/2015

Judge: Erika M. Edwards

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 47

HERTZ VEHICLES, LLC,

Index No: 160598/2015

Plaintiff,

DECISION AND ORDER

-against-

ADEX PHYSICAL THERAPY, P.C., UNIVERSAL  
 HEALTH CHIROPRACTIC, P.C., DAMADIAN MRI  
 IN CANARSIE, P.C., ADVANCED RECOVERY  
 EQUIPMENT AND SUPPLIES, LLC, PRECISION  
 IMAGING OF NEW YORK, P.C., ANTHONY ARO,  
 MUSILU OLUWO, OYINKANSOLA LAWAL and  
 RANTI SOSAN,

Defendants.

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

Papers	Numbered
Notice of Motion and Affidavits/ Affirmations/ Memos of Law annexed	<u>1</u>

***ERIKA M. EDWARDS, J.:***

Plaintiff Hertz Vehicles, LLC ("Hertz") now moves, by notice of motion, dated December 27, 2016, for a default judgment in its favor, pursuant to CPLR § 3215, against Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C., ("Defaulting Defendants"). For the reasons set forth herein, Hertz's motion is GRANTED without opposition to the extent that declaratory judgment is entered in Hertz's favor as against the above-referenced Defaulting Defendants.

On August 8, 2016, Plaintiff Hertz commenced an action seeking a judgment declaring that Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and

PRECISION IMAGING OF NEW YORK, P.C. <sup>2 of 5</sup> have no rights to collect No-Fault benefits with

respect to the alleged motor vehicle accident which occurred on April 19, 2015; that Hertz owes them no duty to pay their No-Fault claims with respect to the alleged accident; and Hertz requested the imposition of a permanent stay of all arbitration, lawsuits and/or claims by the defendants relating to No-Fault claims arising from the alleged accident.

The individual defendants, Anthony Aro (“Aro”), Musilu Oluwo (“Oluwo”), Oyinkansola Lawal (“Lawal”), and Ranti Sosan (“Sosan”) (“the Claimants”) were occupants of a vehicle that was owned and self-insured by Hertz. The complaint alleges that after Hertz received notice of the accident, it attempted to conduct an investigation and subsequently requested that the Claimants appear for independent medical examinations (“IMEs”) to confirm the necessity of any alleged treatments and referrals. Despite due demand, the Claimants all failed to appear for their scheduled IMEs on two occasions. Those failures to appear violated provisions in the No-Fault Regulations and violated conditions precedent to coverage for all No-Fault claims submitted by the Claimants and the medical provider defendants as their assignees. Hertz subsequently denied all claims of the defendants on the basis that the Claimants failed to appear for duly and properly scheduled IMEs.

On October 16, 2015, Hertz moved for judgment declaring that Hertz owed no duty to pay No-Fault claims with respect to the April 19, 2015, accident as to Defendants Adex Physical Therapy, P.C., Universal Health Chiropractic, P.C., Damadian MRI in Canarsie, P.C., Anthony Aro, Musilu Oluwo, Oyinkansola Lawal, and Ranti Sosan only. On June 27, 2016, Hertz moved for default judgment against Adex Physical Therapy, P.C., Universal Health Chiropractic, P.C., Damadian MRI in Canarsie, P.C., Anthony Aro, Musilu Oluwo, Oyinkansola Lawal, and Ranti Sosan for their failure to timely answer the Summons and Verified Complaint. Furthermore, Hertz requested permission to amend the Verified Complaint to add Defendants ADVANCED

RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C., since Hertz received medical bills from those medical providers seeking No-Fault reimbursement for services or supplies allegedly provided to the Claimants after Hertz filed the Verified Complaint with the court. On August 3, 2016, the Honorable Geoffrey D. Wright granted Hertz's request for declaratory judgment against Defendants Adex Physical Therapy, P.C., Universal Health Chiropractic, P.C., Damadian MRI in Canarsie, P.C., Anthony Aro, Musilu Oluwo, Oyinkansola Lawal, and Ranti Sosan and declared that Hertz was not liable to pay No-Fault coverage claims to Defendants Adex Physical Therapy, P.C., Universal Health Chiropractic, P.C., Damadian MRI in Canarsie, P.C., Anthony Aro, Musilu Oluwo, Oyinkansola Lawal, and Ranti Sosan. The court also granted Hertz's motion to amend the complaint to add ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C. as defendants.

On August 29, 2016, the Amended Summons and Amended Verified Complaint were served upon ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C. via the Secretary of State, pursuant to BCL § 306. Additionally, on December 27, 2016, a Notice of Default and a copy of the Summons and Verified Amended Complaint were mailed to ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C. at their last known addresses. To date, however, both defendants failed to answer, appear or move against the complaint, and their time to do so has long since expired. Accordingly, it is hereby

**ORDERED** that Plaintiff's motion for default judgment is granted to the extent that the Clerk is directed to enter declaratory judgment in favor of Plaintiff as against Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING

OF NEW YORK, P.C. with costs and disbursements to Plaintiff as taxed by the Clerk; and it is further

**ADJUDGED and DECLARED** that as to Plaintiff's First Cause of Action, Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C. have no rights to collect No-Fault benefits with respect to the April 19, 2015 collision; and it is further

**ADJUDGED and DECLARED** that as to Plaintiff's Second Cause of Action, Hertz owes no duty to any of the Defendants to pay No-Fault claims with respect to the April 19, 2015 collision; and it is further

**ADJUDGED** that Plaintiff's Third Cause of Action is dismissed; and it is further

**ORDERED** that Plaintiff Hertz Vehicles, LLC, do recover from the Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, LLC and PRECISION IMAGING OF NEW YORK, P.C., who are jointly and severally liable, costs and disbursements in the sum of \$ \_\_\_\_\_ as taxed by the Clerk upon the submission of an appropriate bill of cost, and Plaintiff have execution therefor; and it is further

**ORDERED** that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Date: March 2, 2017

  
**HON. ERIKA M. EDWARDS**

HON. ERIKA M. EDWARDS, J.S.C.