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| Motor Veh. Acc. Indem. Corp. v Hernandez |
| 2017 NY Slip Op 32516(U) |
| November 29, 2017 |
| Supreme Court, New York County |
| Docket Number: 450334/2017 |
| Judge: Kathryn E. Freed |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

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MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

INDEX NO. 450334/2017

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

ASHLYE HERNANDEZ and MILTON HERNANDEZ,

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion is **denied**.

Plaintiff Motor Vehicle Accident Indemnification Corporation ("MVAIC") moves, pursuant to CPLR 3215, for a default judgment against defendant Milton Hernandez to recover the sum of \$2,642.00, plus interest from May 1, 2016, for reimbursement of money it expended pursuant to Articles 51 and 52 of the New York State Insurance Law ("Insurance Law"). The said amount is allegedly owed to MVAIC for expenses incurred in its investigation of an accident involving a motor vehicle owned by defendant Ashlye V. Hernandez and operated by defendant Milton Hernandez on May 1, 2016. MVAIC allegedly incurred these investigatory expenses due to the failure by defendant Ashlye V. Hernandez to carry legally required motor vehicle insurance.

Factual and Procedural Background:

In an August 9, 2017 affidavit of indebtedness submitted in support of the motion Fred Fossett, President of MVAIC, states that, on May 1, 2016, Shadia Herrera and Milton Hernandez were injured in an accident involving a motor vehicle owned by defendant Ashlye V. Hernandez and operated by defendant Milton Hernandez. Doc. 15, at par. 3.¹ MVAIC, in its role as a corporation created pursuant to Article 52 of the Insurance Law, has the statutory responsibility of processing claims and compensating innocent victims of motor vehicle accidents caused by financially irresponsible motorists. Id., at par. 2. Pursuant to section 5209 of the Insurance Law, MVAIC undertook an investigation which revealed that defendants were liable to MVAIC since the insurance policy on defendant Ashlye V. Hernandez's vehicle expired on September 28, 2015. Id., at pars. 4-5. As a first cause of action, MVAIC claims that the investigation it undertook cost \$2,642.00 and it seeks recovery of this amount from defendants Ashlye V. Hernandez and Milton Hernandez. Doc. 12, at pars. 1-5; Doc. 13, at pars. 6-7.²

MVAIC, by its attorney, Robyn S. Drew, Esq., avers that defendant Milton Hernandez was served with the summons and complaint pursuant to Vehicle and Traffic Law section 254 on May 12, 2017 and, although he was served with an additional copy of the summons and complaint pursuant to CPLR 3215(g), he has failed to answer or otherwise appear in this action. Doc. 8, at pars. 6-8; Doc. 14. Therefore, MVAIC asks that its motion for a default judgment be granted against defendant Milton Hernandez in the sum of \$2,642.00. In support of the motion, MVAIC also submits the summons and complaint (Doc. 12); a statement of the monies allegedly owed to MVAIC (Doc. 16); a non-military affidavit (Doc. 17); the police report of the subject accident

¹ All references are to the documents filed with NYSCEF in connection with this action.

² As a second cause of action, MVAIC claims that defendant Ashlye V. Hernandez owes it \$11,308.62 for monies which it paid to Shadia Herrera and Milton Hernandez as a result of the accident. Doc. 12, at pars. 6-8. Defendant Ashlye V. Hernandez has answered the complaint. Doc. 6.

(Doc. 18); and a letter dated June 16, 2016 reflecting that the insurance policy issued to defendant Ashlye V. Hernandez expired on September 28, 2015, prior to the alleged accident. Doc. 19.

Conclusions of Law:

CPLR 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him.” It is well settled that “[o]n a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011). “Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists (*see* 7 Weinstein-Korn-Miller, NY Civ Prac ¶ 3215.24, at 32-326).” *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003).

In the case at bar, MVAIC has submitted its summons and complaint, along with the affidavit of service of the same on Milton Hernandez; an affidavit of additional mailing of the summons and complaint on Milton Hernandez; an affidavit of indebtedness containing the facts constituting the claim; and a statement listing all payments owed to plaintiff arising from the alleged accident, including the sum of \$2,642.00 claimed against defendant Milton Hernandez. However, a review of the complaint reveals that MVAIC has not set forth facts sufficient to persuade this Court that its first cause of action is viable. Indeed, MVAIC simply claims that defendants owe it the sum above without setting forth any legally cognizable reason why this is so. Thus, this Court is constrained to deny the motion.


Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by the plaintiff Motor Vehicle Accident Indemnification Corporation for a default judgment as against defendant Milton Hernandez on its first cause of action is denied; and it is further

ORDERED that plaintiff Motor Vehicle Accident Indemnification Corporation, shall serve a copy of this order on defendants Ashlye V. Hernandez and Milton Hernandez and the Trial Support Office at 60 Centre Street, Room 158; and it is further,

ORDERED that this constitutes the decision and order of this Court.

11/29/2017
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: