

Repwest Ins. Co. v Country-Wide Ins. Co.
2017 NY Slip Op 32921(U)
July 27, 2017
Supreme Court, New York County
Docket Number: 159031/2015
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

REPWEST INSURANCE CO.,

Plaintiff,

- v -

COUNTRY-WIDE INSURANCE CO.,

Defendant.

Index No.: 159031/2015
Motion Date: 07/12/2016
Motion Seq. No.: 01
Motion Cal. No.: _____

The following papers, numbered 1 to 3 were read on this motion for summary judgment in lieu of complaint and cross motion to dismiss action.

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

<u>PAPERS NUMBERED</u>	
_____	1
_____	2
_____	3

Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiff RESWEST INSURANCE CO. moves for an order pursuant to CPLR 3213 granting summary judgment in lieu of complaint against defendant COUNTRY-WIDE INSURANCE CO., in the sum of \$41,000 upon the ground that this action is based upon a money judgment rendered on default in the favor of plaintiff and against defendant in The General Court of Justice, Superior Court Division, County of Rowan, State of North Carolina, entered on the 8th day of June, 2015. Defendant cross moves to dismiss this action based on lack of personal jurisdiction of the North

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

Check One: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**
Check if appropriate: **DO NOT POST** **REFERENCE**

Carolina court over it.

Plaintiff submits with its motion papers a copy of the judgment upon which it sues. The judgment states that was entered upon the failure of defendant to plead or otherwise defend itself.

Plaintiff has submitted the necessary proofs pursuant to CPLR 3213. As plaintiff has demonstrated that the North Carolina court properly exercised in personam jurisdiction over defendant under NCGSA § 1-75.4(10)(b), which is that state's long arm statute, defendant's cross-motion to dismiss the action at bar must be denied. See JDC Finance Company, LP v Patton, 284 AD2d 184 (1st Dept 2001). As the defendant with respect to the notes issued by a Texas company in JDC, defendant automobile insurance carrier of the insured New York State resident motorist should have reasonably anticipated that it would have to defend itself in an action where its insured is involved in a motor vehicle accident in a sister state.

It is therefore,

ORDERED that the motion for summary judgment in lieu of complaint is GRANTED pursuant to CPLR § 3213 and the cross motion to dismiss this action is denied; and it is further

ORDERED and ADJUDGED, that the Clerk of the Court is directed to enter judgment in favor of plaintiff REPWEST INSURANCE CO. and against defendant COUNTRY-WIDE INSURANCE CO. in

the amount of \$40,000, together with interest at the statutory rate thereon, from the June 8, 2015 until the date of entry of judgment, in the amount of \$ _____, as calculated by the Clerk, together with costs and disbursements of this action to be taxed by the Clerk upon submission of an appropriate bill of in the amount of \$ _____, for a total amount of \$ _____.

This is the decision and order of the court.

Dated: July 27, 2017

ENTER:

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