

Hereford Ins. Co. v Wyss
2018 NY Slip Op 31073(U)
May 30, 2018
Supreme Court, New York County
Docket Number: 157005/2015
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X INDEX NO. 157005/2015

HEREFORD INSURANCE COMPANY INDIVIDUALLY AND AS
SUBROGEE OF PABLO PAULINO,

Plaintiff,

MOTION SEQ. NO. 002

- v -

CHRISTINA D. WYSS and CHRISTIAN ALVELO,

Defendants.

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23,
24, 25, 26, 27, 28

were read on this motion to/for DEFAULT JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

Plaintiff Hereford Insurance Company, individually, and as subrogee of Pablo Paulino, moves, pursuant to CPLR 3215 and 320, for a default judgment against defendants Christina D. Wyss and Christian Alvelo. This action arises out of a motor vehicle accident that occurred on July 11, 2010, which plaintiff alleges was caused solely by the negligence of defendants and from which its subrogee suffered injuries and caused plaintiff to incur expenses. Plaintiff issued payments to its insured, Pablo Paulino, for such injuries and expenses and now sues defendants to recover said amounts.

Plaintiff commenced this action on July 10, 2015 by filing a summons and complaint with the Court. Docs. 1 and 23.¹ Thereafter, on July 30, 2015, plaintiff served the amended summons

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

and complaint on defendant Alvelo, and on August 19, 2015, served the said documents on defendant Wyss. Docs. 10 and 24. By order of this Court, on January 6, 2017, (Doc. 17), plaintiff was granted leave to correct an error regarding the date of the alleged incident in the complaint, as well as to serve and file a second amended verified complaint. Doc. 26.

Having corrected the complaint, plaintiff now seeks to enter a default judgment against defendants. Plaintiff avers, through the affirmation of its attorney, Agnes Neiger, Esq., an associate of the firm of Jones Jones LLC, that, to date, neither defendant has served an answer or otherwise appeared in this action and plaintiff is therefore entitled to a default judgment pursuant to CPLR 3215, against both defendants. Doc. 20.

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." On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint, (2) proof of the facts constituting its claim, and (3) proof of the defendant's default in answering or appearing. See CPLR 3215 (f); *Loughran v Giannoti*, ___ AD3d ___ (2d Dept April 11, 2018); *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

In addition to the summons and complaint, Neiger annexes to her affirmation the amended summons and complaint and proof of service thereof on the defendants (Doc. 24), the second

amended summons and complaint (Doc. 12), a copy of the police report of the accident (Doc. 21), an Affidavit of Merit from Robert Miller, a Subrogation Manager with plaintiff who avers he has personal knowledge of the facts and circumstances of this action (Doc. 22), and an Affidavit of Default from David Jolley of the litigation department of Jones Jones, LLC, who attests to the firm's business practices and states that defendants have failed to answer or otherwise appear in this matter. Doc. 25.

This Court thus determines that plaintiff has satisfied the elements of CPLR 3215, having sufficiently established service of the summons and complaint, defendants' failure to answer or otherwise appear in this action, and the facts constituting the claim. Specifically, Miller has personal knowledge of the claims paid out by plaintiff to its subrogee, Pablo Paulino, for injuries and expenses as a result of the accident allegedly caused by defendants herein, and sets forth the facts of the accident as well as the amounts paid out by plaintiff. Plaintiff paid first-party Personal Injury Protection benefits to its insured in the sum of \$12,598.09 and Uninsured Motorist benefits in the sum of \$15,000.00.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Hereford Insurance Company, Individually and as Subrogee of Pablo Paulino, for a default judgment against defendants Christina D. Wyss and Christian Alvelo is granted in all respects; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, and against defendants, in the amount of \$27,598.09, and thereafter at the statutory rate, plus costs and disbursements as taxed by the Clerk; and it is further,

ORDERED that this constitutes the decision, order, and judgment of the court.

5/30/2018

DATE



HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE