

Hertz Veh., LLC v Innovative View Med., P.C.

2012 NY Slip Op 32486(U)

September 24, 2012

Supreme Court, New York County

Docket Number: 113117/11

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
HERTZ VEHICLES, LLC,
Plaintiff,
-against-

Index No. 113117/11
Motion Date 07/06/11
Motion Seq. No. 001
Motion Cal. No.

INNOVATIVE VIEW MEDICAL, P.C., NR ACU-
PUNCTURE, P.C., LMK PSYCHOLOGICAL SERVICES,
P.C., PHYSICAL THERAPY REHAB, P.C., TRAUMA
MEDICAL, P.C., LAWRENCE E. AUGUST, D.C., ALL
ABOUT REHABILITATION & P.T., P.C., UNITED
MEDICAL OFFICES OF LONG ISLAND, P.C., PERFECT
POINT ACUPUNCTURE, P.C., PREMIER SURGICAL
SERVICES, P.C., UPPER EASTSIDE SURGICAL, PLLC,
WESTCAN CHIROPRACTIC, P.C., ANDREW J. DOWD,
M.D., COMPREHENSIVE ANESTHESIA ASSOCIATES,
PLLC, MED HELP SUPPLY, INC., STAND UP MRI OF
BROOKLYN, P.C., HEAL ME MEDICAL, P.C., DI MASSI
CHIRO, P.C. CLEVELAND WILLIAMS, TYRONE HARRISON
and LORRAINE HARRISON,
Defendants.

-----X
The following papers, numbered 1 to were read on this motion for Default Jgmt.

| PAPERS

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No **141B**

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 141B).

Currently, plaintiff moves for default judgment against all defendants except Perfect Point Acupuncture, P.C., NR Acupuncture, P.C., and Cleveland Williams. The two corporate defendants have answered the complaint, and plaintiff represents that it intends to

discontinue against Cleveland Williams, whom it was unable to locate and serve. The Court finds that plaintiff has shown a prima facie case and the right to judgment against all of the remaining defendants except for Lawrence E. August, D.C., Tyrone Harrison, Andrew J. Dowd, M.D.

The complaint and both the affidavit and affirmation in support of the motion explain that in this case plaintiff seeks declaratory and injunctive relief as to its obligation to pay claims or arbitration awards relating to an alleged car accident on December 6, 2010, Hertz claim number 02-2010-28029. The accident involved a Hertz vehicle. Defendants Cleveland Williams and the Harrison defendants allegedly sustained injuries in the accident. The remaining defendants filed medical claims for the treatment of the injuries the individual defendants allegedly sustained.

The motion and annexed documents further explain that the medical bills seem disproportionate to the accident, especially as the accident report stated there were no injuries. Plaintiff sought examinations under oath from the allegedly injured parties. Plaintiff states that defendant Tyrone Harrison failed to appear for the examination. Though the Harrison defendants appeared, plaintiff details some of the inconsistencies in the examinations of the Williams and Lorraine Harrison, with cites to the transcripts. Furthermore, plaintiff indicates that based on the problems with Cleveland Williams' and Lorraine Harrison's statements and on the high medical bills, it sought the examinations of

Perfect Point Acupuncture, P.C., NR Acupuncture, P.C., Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., and Di Massi Chiro, P.C. According to the complaint, affidavit, and affirmation, none of these defendants appeared at their examinations despite proper notice.

In the first cause of action of its complaint, plaintiff seeks declaratory relief against Tyrone Harrison. The second cause of action seeks the same relief against Lorraine Harrison. The third cause of action points to the allegedly problematic testimony of Cleveland Williams and Lorraine Harrison, and seeks a declaration that plaintiff has a founded belief that the individual defendants' claims involve conditions, if any, that are not causally related to the accident and therefore plaintiff owes no duty to pay claims to any of the defendants. The fourth and fifth causes of action seeks a declaration from this Court that plaintiff owes no duty to pay No Fault benefits to Perfect Point Acupuncture, P.C., NR Acupuncture, P.C., Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., and Di Massi Chiro, P.C. based on the failure of these defendants to appear for the demanded examinations. The sixth cause of action seeks a

temporary stay of all arbitrations, lawsuits and/or claims that relate to the alleged car accident on December 6, 2010, Hertz claim number 02-2010-28029.

Plaintiff has shown its right to relief as against Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., and Di Massi Chiro , P.C.. As to Mr. August, Dr. Dowd and Mr. Harrison, however, plaintiff has not provided an adequate nonmilitary affidavit. Under 50 USC §§501 et seq (Soldiers' and Sailors' Civil Relief Act) a default judgment against a defendant must be accompanied by an investigation into the military status of the defendant and an affidavit must be presented detailing the investigation, which cannot be cursory. This investigation is best taken shortly before the motion is made. The most efficient way to accomplish this investigation is to obtain a report from the Department of Defense, which can survey all of the military services. Plaintiff has failed to make this investigation, requiring this Court under the prevailing law to deny this motion as to these three individuals.

In addition, plaintiff's complaint and the documents in support of this motion state that Premier Surgical Services, P.C., Westcan Chiropractic, P.C., Comprehensive Anesthesia Associates, PLLC, and Stand Up MRI of Brooklyn, P.C. submitted medical bills relating to the December 6, 2010 accident, Hertz claim number 02-2010-28029. However, these

documents do not indicate that plaintiff sought examinations from any of them. Thus, apparently only the sixth cause of action, which seeks the temporary stay, applies to these defendants. Plaintiff does not seek declaratory or injunctive relief with respect to any pending claims or awards involving these defendants.

Based on the above, it is

ORDERED that the motion is denied on default as it relates to Tyrone Harrison, and therefore default judgment is denied as to the first cause of action; and it is further

ORDERED that the motion is granted on default as it relates to the second cause of action, and it is further

ORDERED, ADJUDGED AND DECLARED that the action against Lorraine Harrison and the medical providers proceeding as her purported assignees is severed and the Court holds that Lorraine Harrison and the providers have no right to collect No-Fault benefits with respect to her claims from the alleged car accident on December 6, 2010, Hertz claim number 02-2010-28029; and it is further

ORDERED that the action is severed and the motion is granted on default on the fourth and fifth causes of action as to Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., and Di Massi Chiro, P.C.; and it is further

ORDERED ADJUDGED AND DECLARED that plaintiff has no duty to provide No-Fault benefits with respect to the alleged car accident on December 6, 2010, Hertz claim number 02-2010-28029 to Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., and Di Massi Chiro , P.C. ; and it is further

ORDERED that the sixth cause of action is severed as to Lorraine Harrison and the motion is granted on default as it relates to the sixth cause of action as against Lorraine Harrison, set forth the relief resulting from the default; and it is further

ORDERED that this action continues against perfect Point Acupuncture, P.C. and NR Acupuncture, P.C., and is severed and discontinued as to Cleveland Williams; and it is further

ORDERED, ADJUDGED AND DECLARED that there is a temporary stay of all arbitrations, lawsuits and/or claims by Lorraine Harrison, Innovative View Medical, P.C., LMK Psychological Services, P.C., Physical Therapy Rehab, P.C., Trauma Medical, P.C., All About Rehabilitation & P.T., P.C., United Medical Offices of Long Island, P.C., Upper Eastside Surgical, PLLC, Med Help Supply, Inc., Heal Me Medical, P.C., Di Massi Chiro , P.C., Premier Surgical Services, P.C., Westcan Chiropractic, P.C., Comprehensive Anesthesia Associates, PLLC, and Stand Up MRI of Brooklyn, P.C. that relate to Lorraine Harrison's claims and claims from those providers who allegedly treated her for injuries

arising from the alleged car accident on December 6, 2010, Hertz claim number 02-2010-28029; and it is further

ORDERED that the Clerk is directed to enter one judgment in all the severed actions without costs and disbursements.

Dated: 9/24/12

Enter:

Lu

Louis B. York, J.S.C.

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 141B).

**LOUIS B. YORK
J.S.C.**

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE