

<b>Motor Veh. Acc. Indem. Corp. v Tineo</b>
2018 NY Slip Op 31687(U)
July 13, 2018
Supreme Court, New York County
Docket Number: 452452/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

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

Justice

-----X INDEX NO. 452452/2017

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

Plaintiff,

MOTION SEQ. NO. 001

- v -

JOHNNY TINEO,

Defendant.

DECISION AND ORDER

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17  
were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is Ordered that the motion is **granted**.

Plaintiff Motor Vehicle Accident Indemnification Corporation (“MVAIC”) moves, pursuant to CPLR 3215(a), for a default judgment against defendant Jonny A. Tineo to recover the sum of \$50,000.00, plus interest from, February 2, 2001, for reimbursement of monies it expended pursuant to Articles 51 and 52 of the New York State Insurance Law (“Insurance Law”). Said monies were expended due to a motor vehicle accident and the resulting claims paid by MVAIC to the injured parties, Maria Dionisia Duarte, in the amount of \$32,465.30, and Stuart R. Lang, in the amount of \$17,534.70, due to defendants’ failure to carry legally required motor vehicle insurance.

**Factual and Procedural Background:**

In an October 27, 2017 affidavit of indebtedness (Doc. 11) submitted in support of the within motion, Fred Fossett, President of MVAIC, states that, pursuant to the facts set forth in the complaint (Doc. 1), on February 21, 2001, Maria Dionisia Duarte and Stuart R. Lang were injured in a motor vehicle accident.<sup>1</sup> The injuries were caused by an uninsured vehicle, identified as a 1990 Toyota, NY license plate number CH324A and VIN number 4T1SV2E0LU181822, owned by defendant Jonny A. Tineo. Id. Pursuant to section 5213(b) of the New York State Insurance Law, MVAIC entered into a settlement with the injured parties for the amounts previously set forth in the total amount of \$50,000,00, which sum was paid to the injured parties on February 5, 2015. Id., at par. 3. 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. Pursuant to section 5209 of the Insurance Law, MVAIC undertook an investigation which revealed that defendant Tineo was liable to MVAIC since the insurance policy on defendant's car was cancelled as of January 6, 2001. See Doc. 15.

MVAIC, by its attorney, Timothy Murtha, Esq., avers that defendant Jonny A. Tineo was served with the summons and complaint on September 28, 2017, Doc. 6, at par. 6. Defendant was mailed an additional copy of the summons and complaint pursuant to CPLR 3215(g). Doc. 10. Plaintiff's counsel avers that defendant has failed to answer or otherwise appear in this matter. Doc. 6, at par. 6. Therefore, MVAIC asks that its motion for a default judgment be granted against defendant in the sum of \$50,000.00. In support of the motion, MVAIC also submits the summons and complaint (Doc. 8); a Payment Listing of the monies paid to the injured parties (Doc. 12); the

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<sup>1</sup> All references are to the documents filed with NYSCEF in connection with this action.

Affidavit of Facts (Doc. 11) owed to MVAIC (Doc. 12); the police report of the subject accident (Doc. 14); and a letter of cancellation of defendant Jonny A. Tineo's insurance coverage. (Doc. 15).

**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). Moreover, a default in answering the complaint is deemed to be an admission of all factual statements contained in the complaint and all reasonable inferences that flow from them. *See Woodson v Mendon Leasing Corp.*, 100 NY2d 63 (2003).

In the case at bar, MVAIC has submitted its summons and complaint, along with the affidavits of service relating thereto plus the affidavits of additional mailings and an affidavit of indebtedness containing the facts constituting the claim, and a payment listing of all payments incurred pursuant to the underlying matter establishing that the amount owed by defendant to MVAIC is \$50,000.00. MVAIC asks for interest from February 21, 2001. However, without any supporting documents reflecting why it took MVAIC so long to make the \$50,000.00 payment, this Court is only granting statutory interest from February 5, 2015, the date the said payment was made.

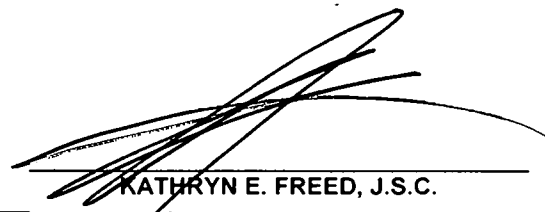
Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that the motion by the plaintiff Motor Vehicle Accident Indemnification Corporation for a default judgment against defendant Jonny A. Tineo is granted in the amount of \$50,000.00, plus interest from February 5, 2015, as calculated by the Clerk; and it is further,

**ORDERED** that plaintiff Motor Vehicle Accident Indemnification Corporation, shall serve a copy of this order on defendant Jonny A. Tineo 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.

7/13/2018  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE