

**Salguero v Godfrey**

2018 NY Slip Op 33625(U)

June 28, 2018

Supreme Court, Putnam County

Docket Number: 1387/2016

Judge: Janet C. Malone

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

13

To commence the statutory period for appeals as of right under CPLR §5513(a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

PUTNAM COUNTY  
CLERK

2018 JUL -6 AM 8:18

SUPREME COURT STATE OF NEW YORK  
COUNTY OF PUTNAM

\_\_\_\_\_ X Index No.: 1387/2016  
CELSO SALGUERO

Plaintiff,

-against-

ORDER  
Motion Sequence: 1

GEORGE GODFREY,

Defendant.

\_\_\_\_\_ X  
MALONE, J.

On March 16, 2018, Defendant's counsel filed an Amended Notice of Motion<sup>1</sup> for summary judgment pursuant to CPLR R 3212 on the basis that Defendant was not negligent and in the alternative that Plaintiff has failed to satisfy the no-fault threshold set forth in §5102(d) of the Insurance Law of the State of New York, with a return date of April 6, 2018.

On April 6, 2018, Plaintiff's counsel by way of letter, requested an adjournment of the return date of the motion, on consent, to April 27, 2018 which was granted by the Court. Thereafter, Defendant's motion was granted by Decision and Order (Malone, J.) dated May 4, 2018, after a search of Putnam Records Online and the Court's Chambers revealed that Plaintiff failed to file papers in opposition to Defendant's Motion for Summary Judgment.

By way of letter dated May 10, 2018, a Paralegal from Plaintiff's firm stated that on April 26, 2018, Plaintiff's office submitted a letter to the Court on consent to adjourn Defendant's motion

<sup>1</sup> Defendant's motion was originally filed on March 13, 2018.

from April 27, 2018 to May 11, 2018, without attaching a copy of such letter, and that while preparing the opposition papers, realized that the motion was still returnable on May 4, 2018.

Defendant's counsel claims by way of letter dated May 11, 2018, that Plaintiff's counsel requested an adjournment of the motion to May 11, 2018 with counsel's consent, however, Defendant's counsel incorrectly states that this Court granted the adjournment request of Plaintiff's counsel and failed to provide any proof or a basis for such a representation as this Court has no record of the subject letter or adjournment request. Nonetheless, Defendant's counsel goes on to state in the same letter that pursuant to CPLR R 2214, Plaintiff was required to file opposition to the motion on or before May 4, 2018, and that Defendant did not receive such papers until May 11, 2018 in violation of CPLR R 2214. Therefore, Defendant's counsel requests that the Court disregard Plaintiff's opposition papers in its entirety or in the alternative adjourn the matter for Defendant to submit reply papers.

In response, the Paralegal from Plaintiff's office, and not Plaintiff's counsel, states in a letter dated May 14, 2018, that the alleged letter requesting an adjournment was sent to the Court on April 27, 2018, the return date of Defendant's motion, and further states that under the "assumption" that the adjournment had been granted, served Plaintiff's opposition papers on Defendant's counsel on May 10, 2018, with no explanation for the untimeliness of service of Plaintiff's opposition papers. Plaintiff's counsel's office again fails to attach the purported letter, which if sent on April 27, 2018 would be in violation of the Court's Part Rules which states that "a request to adjourn a motion must be made in writing and transmitted to Chambers by fax *prior to the return date of the motion...*" (*emphasis added*). See, Court Part Rule at paragraph IV(C).

On May 14, 2018, Plaintiff's counsel untimely filed opposition papers to Defendant's motion, including a thirty-six (36) page Affirmation in violation the page limit set by the Court's Part Rules. See, CPLR R 2214 and Court Part Rule at paragraph VI (A)(3).

Therefore, to the extent Plaintiff's counsel has failed to provide a copy of any of the supposed letters dated April 26, 2018 and April 27, 2018 to the Court requesting an adjournment of this matter, and as counsel fail to provide proof that they were advised that an adjournment of the motion to May 11, 2018 was granted by the Court, and as Plaintiff's opposition papers are in violation of the Court's Part Rules and are untimely pursuant to CPLR R 2214, without reaching the merits of Plaintiff's opposition papers are rejected.

This Order is not lightly issued as the Court recognizes the strong public policy in favor of the disposition of matters on their merits rather than by default (*see, Ahmad v. Aniolowski*, 28 A.D. 3d 692 [2d Dep't 2006]), however, the Court cannot condone Plaintiff's counsel's office's lack of support for the default and especially the lack of support for Plaintiff's counsel's firm's representation that this Court approved an adjournment of the return date when the Court has no proof of same, and said proof might have obviated the necessity of this Order.

THEREFORE, IT IS HEREBY,

ORDERED, that the Decision and Order (Malone, J.) dated May 4, 2018 stands and the Court will not consider Plaintiff's counsel's paralegal's letter application to consider Plaintiff's opposition papers; and it is further

ORDERED, that the opposition papers submitted by Plaintiff's counsel are rejected as set forth herein; and it is further

ORDERED, that Plaintiff's counsel has until July 31, 2018 to file the appropriate motion for the Court's consideration supported by affidavits in support, letters dated April 26, 2018 and April 27, 2018, and proof that the Court granted any adjournment of Defendant's motion after April 27, 2018.

This constitutes the Order of this Court.

Dated: June 28, 2018  
Carmel, New York

ENTER:

  
HON. JANET C. MALONE  
Justice of the Supreme Court

To:

Harmon, Linder & Rogowsky  
*Attorneys for Plaintiff*  
3 Park Avenue, Suite 2300  
New York, New York 10016

William H. Bave, Jr. Esq.  
Wilson Bave Conboy Cozza & Couzens, P.C.  
*Attorneys for Defendant*  
Two William Street  
White Plains, New York 10601