

State Farm Fire & Cas. Co. v Advanced Orthopedics & Joint Preserv., P.C.
2021 NY Slip Op 31814(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 159150/2019
Judge: Richard G. Latin
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD G. LATIN PART IAS MOTION 46

Justice

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INDEX NO. 159150/2019

STATE FARM FIRE AND CASUALTY COMPANY,

MOTION DATE 5/24/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

ADVANCED ORTHOPEDICS AND JOINT PRESERVATION, P.C. A/K/A ADVANCED ORTHO AND JOINT PRESERVATION, ALL COUNTY, L.L.C., AMDO MEDICAL, P.C., D & S PHARMACY, L.L.C., INTERVENTIONAL PAIN MEDICINE, P.C., QIUSHUANG LIU, L.A.C., PAVO CRISTATUS MEDICAL, P.C., PHYSIOKINETICS PHYSICAL THERAPY, P.C., PRASHANTH V. REDDY, M.D., SABAS NY SERVICES, INC., TENS CHIROPRACTIC, P.C., ANITA BASDEO, RAVENDRA MOHABIR

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, it is ordered that plaintiff's motion for leave to enter default judgment against defendants Advanced Orthopedics and Joint Preservation, P.C. a/k/a Advanced Ortho and Joint Preservation, All County, L.L.C., D & S Pharmacy, L.L.C., Interventional Pain Medicine, P.C., Pavo Cristatus Medical, P.C., Sabas NY Services, Inc., Tens Chiropractic, P.C., Anita Basdeo, and Ravendra Mohabir is determined as follows:

Plaintiff commenced this action seeking a declaration that it is not obligated to pay no-fault benefits to Mohabir, or to the healthcare defendants for treatment or medical equipment supplied to Mohabir, for injuries allegedly sustained in a motor vehicle accident that occurred on May 4, 2019 involving plaintiff's insured Anita Basdeo.

When a party fails to appear or answer, its adversary may seek a default judgment from

that party (CPLR 3215[a]). In order to obtain a default judgment pursuant to CPLR 3215 a movant must provide proof of service of the summons and complaint and proof of the facts constituting the claim (CPLR 3215[f]; see *Gantt v North Shore-LIJ Health System*, 140 AD3d 418 [1st Dept 2016]). Here, plaintiff satisfied its burden with the requisite proof (CPLR 3215[f]).

Defendant Sabas NY Services, Inc. (“Sabas”) opposed plaintiff’s motion and essentially cross-moves pursuant to CPLR 3012(d) and CPLR 2004 for plaintiff to be compelled to accept defendant’s answer.

Pursuant to CPLR 3012(d), the court has the discretion to compel acceptance of an untimely pleading ‘upon such terms as may be just’ provided that there is a showing of a reasonable excuse for the delay (*Emigrant Bank v Rosabianca*, 156 AD3d 468 [1st Dept 2017][citations omitted]). Factors which the court consider are the length of the delay, prejudice, whether the default was willful, and the strong public policy in favor of resolving disputes on the merits (see *Chevalier v 368 E. 148th St. Assoc, LLC*, 80 AD3d 411 [1st Dept 2011]). Additionally, law office failure may constitute a reasonable excuse in order to avoid a default judgment (see *Galaxy Gen. Contr. Corp. v 2201 7th Ave. Realty LLC*, 95 AD 789 [1st Dept 2012]). Further, so long as no default was entered against the party seeking extension, that party is not required to demonstrate a meritorious defense (see *Nason v Fisher*, 309 AD2d 526 [1st Dept 2003]; *DeMarco v Wyndham Intern., Inc.*, 299 AD2d 209 [1st Dept 2002]).

Here, service was made on defendant Sabas via the Secretary of State and proof of such service was not filed November 7, 2019. Shortly thereafter, defendant Sabas then filed its answer on January 7, 2020. Moreover, defendant’s counsel explained that the law firms of Gabriel and

Shapiro, Gabriel and Moroff, and the Gabriel Law Firm have been undergoing a reorganization and a move to a new building in Rockville Centre, New York. He averred that the move preparations, including certain staff moving, began in early October 2019 and was eventually completed in February 2020. Thus, he maintained that defendant's answer was untimely due to law office failure as a result of the move and merger.

Inasmuch as defendant Sabas has a reasonable excuse based on law office failure, its delay in answering was relatively brief, plaintiff has not demonstrated prejudice as a result of the delay, and because public policy favors resolution of cases on the merits, the default judgment is denied as to Sabas and its prior answer is deemed accepted.

Accordingly, it is,

ORDERED that the plaintiff's motion for leave to enter a default judgment against defendants Advanced Orthopedics and Joint Preservation, P.C. a/k/a Advanced Ortho and Joint Preservation, All County, L.L.C., D & S Pharmacy, L.L.C., Interventional Pain Medicine, P.C., Pavo Cristatus Medical, P.C., Tens Chiropractic, P.C., Anita Basdeo, and Ravendra Mohabir is granted; and it is further

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to the defendants Advanced Orthopedics and Joint Preservation, P.C. a/k/a Advanced Ortho and Joint Preservation, All County, L.L.C., D & S Pharmacy, L.L.C., Interventional Pain Medicine, P.C., Pavo Cristatus Medical, P.C., and Tens Chiropractic, P.C., to reimburse them for treatment they rendered or medical equipment they provided to defendant Mohabir for injuries allegedly sustained in the motor vehicle accident dated May 4, 2019; and it is further

ORDERED that the action is severed and continued as against defendant Sabas NY Services, Inc.; and it is further,

ORDERED that defendant Sabas NY Services, Inc.'s answer, filed on January 7, 2020, will be deemed timely filed and served, nunc pro tunc, upon service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of upload of this order onto NYSCEF.

This constitutes the decision and order of this Court.

5/27/2021

DATE



RICHARD G. LATIN, 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