

Primary Care Ambulance Corp. v Simpson
2014 NY Slip Op 33898(U)
September 18, 2014
Supreme Court, Richmond County
Docket Number: 101989/2012
Judge: Charles M. Troia
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COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

PRIMARY CARE AMBULANCE CORPORATION X

Plaintiff,

-against-

GEORGETTE HALLIDAY SIMPSON
and DAROLD SIMPSON

Defendants.
_____ X

DCM Part 1
Present:

HON. CHARLES M. TROIA

DECISION AND ORDER

Index No. 101989/2012

Motion No. 659-001

The following papers numbered 1 to 6 were marked fully submitted on the 13th day
of June, 2014.

	Papers Numbered
Notice of Motion by Defendant to Vacate a Default Judgment, with Supporting Papers and Exhibits (dated February 19, 2014).....	1
Affirmation in Opposition by Plaintiff, with Supporting Papers and Exhibits (dated April 7, 2014).....	2
Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Vacate (dated April 16, 2014).....	3
Defendant's Reply Affirmation (dated May 15, 2014).....	4
Defendant's Memorandum of Law in Support of Motion (dated May 19, 2014).....	5
Plaintiff's Sur-Reply (dated May 20, 2014).....	6

Upon the foregoing papers, the motion of defendant Georgette Simpson Halliday (hereinafter, Defendant) for an order vacating a clerk's judgment entered on default on February 21, 2013 is granted.

In this action, the corporate plaintiff is seeking to recover monies which is allegedly owed by defendants based on their failure to make payments for certain ambulance transportation services rendered to them for the period encompassing January 29, 2008 through February 23, 2011.

Plaintiff originally pled six causes of action against both defendants. Following defendant Darold Simpson's death¹ and defendant Georgette Halliday Simpson's failure to appear, plaintiff, sought the entry of a default judgment from the Clerk of this Court in the amount of \$118,810.73 plus costs, totaling \$172,214.35 on its first and sixth causes of action. Upon the remaining defendants failure to satisfy same, plaintiff served the moving defendant with an Income Execution, as a result of which defendants wages have been garnished since August 2013.

Defendant now seeks an Order pursuant to CPLR 317 vacating the Clerk's judgment entered upon her default, compelling plaintiff to accept defendants' answer and directing that the case be resolved on its merits.

The motion is granted.

¹Darold Simpson passed away on January 4, 2012 prior to the entry of the Clerks Judgment at issue. Inasmuch as plaintiff did not name his estate as a necessary party to this action the motion is brought only on behalf of Georgette Halliday Simpson

CPLR 3215(a) permits the Clerk of the Court to enter default judgment in favor of a plaintiff upon the submission of acceptable proof that plaintiff's claim is for a sum certain or for a sum which can by computation be made certain. As the clear language of CPLR 3215(a) indicates, the circumstances under which the Clerk is authorized to act are quite narrow, as they are limited to claims for the recovery of money only, and solely where the claim consists of either a precise monetary amount or a monetary amount which can be arrived at by simple arithmetic computation. Moreover, the party seeking the entry of a default judgment must provide the Clerk with such requisite proof as is required in CPLR 3215(f) or the application will be denied (*see* Stephan B. Gleich & Assoc. v Gritsipls, 87 AD3d 216,218). Lastly, the Clerk may not enter a default judgment where one or more of the causes of action alleged in the complaint also requests a different relief (*id.* at 224).

Here, plaintiff is basing its entitlement to judgment upon a document which defendant allegedly is to have signed stating that she would endorse every check given to her by United Health Care to plaintiff, Primary Care Ambulance. The agreement further states that if defendant failed to perform in accordance therewith, she "will" be prosecuted for theft of services. The remainder of the document lists the amount allegedly owed to plaintiff. However, the sums upon which plaintiff seeks to rely in order to validate its claim to a "sum certain" are listed after and below defendant's signature and appear to this Court to have been added after the plaintiff signed the agreement. As such the agreement does not constitute an account stated (*id.* at 223), nor can it furnish unequivocal proof of plaintiff's entitlement to a "sum certain or ... a sum which can by computation be made certain" (CPLR3215(a)). The portion of the agreement that preceded defendant's signature clearly does not impose any direct obligation to pay any specific sum of money (*cf.* *Gipp v.*

Gipp 37 AD3d 406 ; Ayres Mem'l Animal Shelter, Inc. v. Montgomery County Society for the Prevention of Cruelty to Animals, 17 AD3d 904). Thus, the damages sought do not represent a sum certain and cannot be determined in the absence of extrinsic proof (see, Vinny Petulla Contr. Corp. V. Ranieri, 94 AD3d 751). Accordingly, the Richmond County Clerk did not have the authority to enter judgment in this case.

Given that the Clerk's judgment was a nullity, the motion to vacate same did not require defendant to set forth a reasonable excuse for the default or a meritorious defense to the action (see Ayres Mem Animal Shelter Inc. v. Montgomery County Society for the Prevention of Cruelty to Animals 17 AD3d at 905; Gibbs v Hoot Owl Sportsman's Club, 257 AD2d 942, 943).

Accordingly, it is

ORDERED, that the motion is granted; and it is further

ORDERED, that the default judgment entered by the Clerk of this Court on February 21, 2013 is declared to be null and void; and it is further

ORDERED, that the Income Execution underlying the garnishment of defendant's wages is vacated; and it is further

ORDERED, that any and all sums received by plaintiff as a result of said garnishment shall be turned over to plaintiff's counsel to be held in escrow, to be applied to any judgment which may be entered in plaintiff's moving case; and it is further

ORDERED, that the moving defendant's default is vacated and her time to answer is extended until 20 days following service upon her of a copy of this Decision and Order with Notice of Entry.

Dated: September 18, 2014

ENTER,

A handwritten signature in black ink, appearing to read 'C. Troia', is written over a horizontal line.

J.S.C.

Hon. Charles M. Troia
Justice of the Supreme Court