

**GEICO Gen. Ins. Co. v Caminero**

2020 NY Slip Op 31073(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 159574/2019

Judge: Kathryn E. Freed

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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

-----X

INDEX NO. 159574/2019

GEICO GENERAL INSURANCE COMPANY

Plaintiff,

MOTION SEQ. NO. 001

- v -

EDDY CAMINERO,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10 were read on this motion to/for JUDGMENT - DEFAULT.

In this subrogation action commenced by plaintiff GEICO General Insurance Company, as subrogee of Joan M. Pena, against defendant Eddy Caminero, plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendant in the amount of \$65,000.00. After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is decided as follows.

On October 11, 2016, plaintiff's subrogor, Pena, was injured in a motor vehicle collision on the Major Deegan Expressway in The Bronx. At the time of the incident, Pena owned and operated a 2015 Honda insured by plaintiff. The other vehicle involved in the incident was an uninsured 2010 Porsche operated by defendant Eddy Caminero and owned by nonparty Jonathan Paulino. The accident occurred when the vehicle driven by Caminero struck the vehicle operated by Pena

and caused the latter “serious injury” within the meaning of Insurance Law section 5102. Following the incident, plaintiff paid Pena uninsured motorist benefits in the amount of \$65,000.00.

Plaintiff commenced the captioned action by filing a summons and complaint against Caminero on October 2, 2019. Caminero was thereafter served with process but has failed to answer or otherwise appear in this action.

Plaintiff now moves, pursuant to CPLR 3215, for a default judgment against Caminero, demanding that Caminero reimburse it in the amount of \$65,000.00, representing the monies which it paid to Pena, plus costs and interest from October 11, 2016.

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 a party moving for a default judgment pursuant to CPLR 3215 must establish proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1<sup>st</sup> Dept 2016).

Here, plaintiff has established proof of service of the summons and complaint, as well as proof of a subsequent mailing of the summons and complaint to Caminero. It has also established, through the affirmation of its attorney, that Caminero has failed to answer or otherwise appear in this action. Finally, plaintiff has submitted

an affidavit of merit written by its subrogation supervisor, Tanya Cutlip, who attests, inter alia, that plaintiff paid Pena \$65,000.00 pursuant to her motor vehicle insurance policy as a result of the incident. Cutlip also annexes proof that a check was issued to Pena in the amount of \$65,000.00. Thus, plaintiff has established its entitlement to a default judgment against Caminero in the amount of \$65,000.00, plus costs and interest from October 11, 2016.

Although this Court notes that Cutlip's affidavit was notarized by a Virginia notary, it does not contain a certificate of conformity as required by CPLR 2309. However, this defect, which may be cured by the submission of a proper certificate of conformity *nunc pro tunc*, does not warrant the denial of the motion. *See Bank of New York v Singh*, 139 AD3d 486, 487 (1st Dept 2016).

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

ORDERED that the motion by the plaintiff GEICO General Insurance Company, as subrogee of Joan M. Pena, for a default judgment against defendant Eddy Caminero is granted, and plaintiff is awarded judgment in the amount of \$65,000.00, plus costs and statutory interest from October 11, 2016, as calculated by the Clerk of the Court; and it is further

ORDERED that, within 20 days of entry of this order, plaintiff shall serve a copy of the same, with notice of entry, on defendant Eddy Caminero and on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of the court.

4/27/2020

DATE



KATHRYN E. FREED, 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