

Castillo-Florez v Charlecius

2020 NY Slip Op 35489(U)

February 24, 2020

Supreme Court, Queens County

Docket Number: Index No. 707139/2019

Judge: Joseph Risi

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOSEPH RISI, A.J.S.C.

IA Part 3

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CARLOS CASTILLO-FLOREZ,

Index
Number 707139/2019

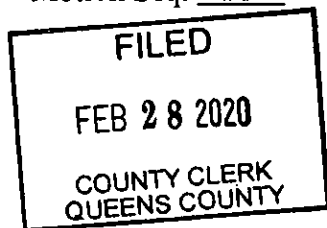
Plaintiff,

-against-

DECISION/ORDER

MARCEAU CHARLECIUS, METROPOLITAN
TRANSPORTATION AUTHORITY, THE NEW
YORK CITY TRANSIT AUTHORITY, and
METROPOLITAN TRANSPORTATION
AUTHORITY BUS COMPANY,

Motion Seq. #1



Defendants.
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The following papers numbered 1-9 read on this motion by plaintiff seeking a default judgment against Marceau Charlecius ("Charlecius").

	<u>Papers</u> <u>Numbered</u>
N.M., Aff., Exhibits and Service.....	1-4
Aff. in Opposition, Exhibits and Service.....	5-7
Reply, Exhibit and Service.....	8-9

Upon the foregoing papers, this unopposed motion is decided as follows:

Plaintiff Carlos Castillo-Florez ("Castillo-Florez") commenced this action by filing a summons and complaint on April 23, 2019, seeking to recover damages for personal injuries plaintiff Castillo Florez as a result of the bus that defendant Charlecius was operating, came into contact with plaintiff on May 7, 2018 at or near the premises known as 32-53 102 Street, Queens County, City and State of New York.

In support of the motion, plaintiff submits proof that defendant Charlecius was served

with the relevant summons and complaint on June 8, 2019 pursuant to CPLR §308(2) at 6 Avon Road, Farmingdale, New York with the mailing completed on June 10, 2019 and the filing of the affidavit of service on June 13, 2019 (*see* CPLR §308[2]). Defendant has not answered or moved for an extension of time to answer. Thus, the plaintiff has demonstrated an entitlement to the entry of an interlocutory judgment against the defendant Charlecius on the issue of liability (*see* CPLR §3215[f]; *Giovanelli v Rivera*, 23 AD3d 616 [2nd Dept. 2005]; *Landaverde v Wrath*, 260 AD2d 448 [2nd Dept. 1999]). The burden then shifts to defendant Charlecius to prove that the imposition of a default judgment is not warranted.

In opposition to the motion, defendant submits an attorney affirmation, a copy of the pleadings and an affidavit from defendant Charlecius. Defendant Charlecius contends that the affidavit of service is invalid because he was not served at his actual dwelling place and that since he was never properly served, personal jurisdiction was never obtained over defendant Charlecius. Mr. Charlecius' affidavit states that on June 8, 2019 and June 10, 2019 defendant Charlecius did not reside at the address located at 6 Avon Road, Farmingdale nor was it his primary residence. He further states that on June 8, 2019 and June 10, 2019, his primary residence was 603 East 85th Street, Brooklyn and that it remains his primary residence. In reply, plaintiff, submits an abstract from the New York State Department of Motor Vehicles which states that as of February 17, 2020, defendant Charlecius' address was still listed as 6 Avon Road, Farmingdale, New York. While it may be accurate that defendant Charlecius no longer resides at 6 Avon Road, Farmingdale, as of June 2019, this is not a bar to his being served at this address. It is clear that Charlecius failed to update his mailing address with the State Department of Motor Vehicles as required by Vehicle and Traffic Law ("VTL") §505(5) (*see* VTL §505(5); *Gardner v Tully*, 227 AD2d 587 [2nd Dept. 1996]). Additionally, the failure of defendant to

update his address with the Department of Motor Vehicles prevents this defendant from challenging the diligence of a process server to ascertain his correct address (*see Cruz v Narisi*, 32 AD3d 981 [2nd Dept. 2006]).

Accordingly, the motion for a default judgment against Marceau Charlecius is granted.

The inquest and assessment of damages against defaulting defendant Marceau Charlecius shall be held at the time of trial of the action against the remaining defendants.

This is the decision and order of the Court.

Date: February 24, 2020


Hon. Joseph Risi, A.J.S.C.

FILED
FEB 28 2020
COUNTY CLERK
QUEENS COUNTY