

State Farm Mut. Auto. Ins. Co. v All County, LLC
2021 NY Slip Op 30479(U)
February 18, 2021
Supreme Court, New York County
Docket Number: 162463/2019
Judge: Phillip Hom
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PHILLIP HOM PART IAS MOTION 2
Justice
INDEX NO. 162463/2019
MOTION DATE 09/29/2020
MOTION SEQ. NO. 001

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- v -

ALL COUNTY, LLC,BIG APPLE MED EQUIPMENT, INC.,BRONX URGENT CARE, CITYWORKS PHYSICAL THERAPY, P.C.,CREST TRANSPORTATION SERVICES, INC. D/B/A ASSIST AMBULANCE, CVS RX, INC. D/B/A EXPRESS PHARMACY, DEV HEALTHCARE, P.C.,DYNAMIC MEDICAL IMAGING, P.C.,GEROVINA, INC.,ICONIC WELLNESS SURGICAL SERVICES, INTEGRATED SPECIALTY ASC, LLC,JA PHYSICAL THERAPY, P.C.,JOSEPH JIMENEZ, M.D., KINGS CHIROPRACTIC WELLNESS, P.C.,LK ACUPUNCTURIST, P.C.,JOHN LYONS, M.D., MACCABI PHARMACY RX, INC.,MC PHYSICAL THERAPY, P.C.,METRO PAIN SPECIALIST P.C.,NEXTSTEP HEALING, INC.,NORTHERN MEDICAL CARE, P.C.,PREMIER ANESTHESIA ASSOCIATES, ROXBURY ANESTHESIA, LLC,SENIORCARE911, SMS THERAPY SUPPLY, INC.,SURGICORE OF JERSEY CITY, LLC,SYNERGY MEDICAL LABORATORIES, P.C.,TOPLAB, UNION DME, WOODHAVEN CHEMIST CORP, JEAN AIME, CHARLES PETERSON, SUZETTA DARBOUZE, ADVANCED COMPREHENSIVE LABORATORY, LLC D/B/A TOP LAB

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for VACATE -

Upon the foregoing documents, it is ORDERED that the motion is granted to the extent of deeming Defendant Metro Pain Specialist PC's ("Metro") answer, dated August 13, 2020 and efiled on September 8, 2020 timely filed.

In this action for a declaratory judgment, Plaintiff State Farm Automobile Insurance Company (“State Farm”) served the Summons and Verified Complaint on Metro under Business Corporation Law §306 by serving the Secretary of State on January 22, 2020 (E10). Metro served its Answer with Combined Discovery Demands dated August 13, 2020 by mail on August 19, 2020 (E 92), seven months later. State Farm’s counsel rejected Metro’s answer in an August 24, 2020 letter. (E93). Metro now moves for an order under CPLR §5015(a)(1) vacating its default in appearing in this matter and upon such vacatur, under CPLR §3012(d) granting Metro an extension of time to appear and plead.

The branch of Metro’s motion to vacate its default in appearing in this action is inapplicable in this case because there has been no default. The Court will only consider Metro’s motion for an order granting it an extension under CPLR §3012(d) to appear and plead.

Metro submits the affidavits of Carmella Londono, a former paralegal at its law firm, the Rybak Firm, PLLC, and Dolores McGovern, who currently works as a paralegal at the Rybak Firm in support of its motion. Ms. Londono’s affidavit states that she contacted the Secretary of State and was advised that there was a backlog on the service of summons and complaints. Ms. Londono does not specify the date she called the Secretary of State, but she does state that she left the firm in April of 2020 (E 95). Ms. Londono’s affidavit does not specifically address this case, but merely states that the Secretary of State is experiencing backlogs in service in all cases. State Farm sent the Summons and Complaint to the Secretary of State be

served on Metro in January 2020. There is no statement about when Metro received the Summons and Complaint from the Secretary of State or when Metro gave the Summons and Complaint to the Rybak Firm.

Similarly, Ms. McGovern's affidavit does not state when she received the Summons and Complaint or any other relevant dates. Her affidavit merely describes the Rybak Firm's procedures for answering Summonses and Complaints and their protocols for filing a motion to compel acceptance of an answer when its answer is late. The affidavit also states that the Rybak Firm may not be able to comply with CPLR timelines to answer because its volume of work may exceed the staff's capacity to file its answers timely.

Despite the limited probative value of these affidavits, the Court takes judicial notice that there is a pandemic and offices, both public and private, are operating either remotely or with greatly reduced staff, resulting in delays. The Court also notes the public policy favoring the resolution of disputes on their merits (*Jones v 414 Equities, LLC. infra* at 81) and grants Metro's motion for an order under CPLR §3012(d).


CPLR §3012(d) provides in relevant part: "Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default." A showing of a potentially meritorious defense is not an essential component of a motion to serve a late answer under

CPLR §3012(d) where, as here, no default order or judgment has been entered.

(*Jones v 414 Equities, LLC*, 57 AD3d 65,81 [1st Dept 2008]).

To prevent any prejudice to State Farm, the Court orders interest on Metro’s claim to be tolled until August 19, 2020. State Farm is ordered to accept Metro’s answer and to provide responses to the Combined Discovery demands within 30 days of this Order.

2/18/2021
DATE


PHILLIP HOM, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE