

**First Trinity Life Ins. Co. v Advance Funding LLC**

2022 NY Slip Op 31652(U)

May 20, 2022

Supreme Court, New York County

Docket Number: Index No. 652780/2020

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ARLENE BLUTH PART 14**

*Justice*

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**INDEX NO. 652780/2020**

FIRST TRINITY LIFE INSURANCE COMPANY,

**MOTION DATE \_\_\_\_\_**

Plaintiff,

**MOTION SEQ. NO. 009 010**

- v -

ADVANCE FUNDING LLC, DAN CEVALLOS, MONICA RAY,  
CITIBANK N.A.,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 255, 256, 258, 260

were read on this motion to/for VACATE - DECISION.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 254, 257, 259

were read on this motion to/for RENEW/REARGUE.

Motion Sequence Numbers 009 and 010 are consolidated for disposition. The motion (009) by defendant Ray to vacate her default is granted as described below. The motion (010) by defendant Ray to reargue and renew is denied.

**Background**

This case is about a lottery winner: former defendant Martinez. Martinez won a New York State Lottery game in April 2008 that had a minimum prize of \$2 million. In August 2016, Martinez entered into an agreement with defendant AF in which he agreed to assign 32 months of prize payments totaling over \$800,000 in exchange for a lump sum payment of \$465,000. AF then assigned its right to the money to plaintiff in exchange for a payment in excess of \$500,000.

In connection with Martinez's assignment to AF, a petition was brought in Schenectady to approve the transfer. However, Martinez later moved (via a new attorney) to strike the assignment and disavow an affidavit he signed in which he agreed to the transaction. He later withdrew the order to show cause in exchange for an increased lump sum payment. Then Martinez brought another application seeking to stop any more payments by the state's Lottery Commission because AF allegedly did not make the additional payments promised to him in the settlement.

### **Motion Sequence 009**

Previously, the Court granted a default judgment against defendant Ray (NYSCEF Doc. No. 219). The Court noted that although Ms. Ray had made a separate motion to dismiss, she failed to address plaintiff's motion for a default against her and so the Court granted it without opposition.

Now Ms. Ray (appearing self-represented) explains that she inadvertently forgot to address plaintiff's motion for a default judgment and points out potential meritorious defenses to plaintiff's case.

In opposition, plaintiff emphasizes that it properly served Ms. Ray and that she did not provide a reasonable excuse for her delay in answering the second amended complaint. It also insists that Ms. Ray did not offer a meritorious defense and contends she had a central role in the alleged fraud at issue in this case. Plaintiff maintains that Ms. Ray evaded service and her motion should be denied.

“As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 160 NYS3d 590, 2022 NY Slip Op 01266 [1st Dept 2022]).

The Court grants this motion by defendant Ray to the extent that it vacates her default and grants her request for leave to file an answer. The fact is that Ms. Ray filed a motion to dismiss and simply forgot to address plaintiff's motion for a default judgment. That oversight is not a reason to enforce a default judgment and foreclose Ms. Ray's chance to offer a defense. And Ms. Ray established meritorious defenses through her own affidavit and the affidavits she attaches (NYSCEF Doc. Nos. 243-247).

In other words, Ms. Ray sufficiently disputed that she had knowledge about the alleged fraud and that she was not involved. To be clear, however, the Court makes no factual finding about Ms. Ray's actual involvement. It merely finds Ms. Ray met her burden to vacate her default. She must file an answer on or before June 1, 2022.

In any event, this Court prefers that cases be decided on the merits rather than technicalities. Ms. Ray should have the chance to present her case.

**MS010**

In this motion, Ms. Ray moves to "renew and/or reargue" the Court's denial of her motion to dismiss. Ms. Ray purports to attach "newly found documents," including a deposition transcript from Dan Cevllaos (who ran Advanced Funding) and suddenly provides various affidavits from people with purported knowledge about the case.

"A motion for renewal is, of course, properly made to the motion court to draw its attention to material facts which, although extant at the time of the original motion, were not then known to the party seeking renewal and, consequently, were not placed before the court. Renewal is granted sparingly, and only in cases where there exists a valid excuse for failing to submit the additional facts on the original application; it is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation. Nor is it

available to argue new legal theories which could have been previously relied upon but were not on the assumption that what was submitted was adequate” (*Matter of Matter of Beiny*, 132 AD2d 190, 209-10, 522 NYS2d 511 [1st Dept 1987]).

Unfortunately for Ms. Ray, a motion to renew is not a chance to make a better motion once the Court has rejected a party’s request for relief. She did not sufficiently explain why she was unable to submit all of this new evidence when she made her previous motion. The purported facts discussed in her affidavits all concern matters that occurred well before Ms. Ray made her motion to dismiss and the deposition she references occurred on October 20, 2021. It would be wholly improper for this Court to simply ignore the fact that none of this “new” evidence is actually new. It seems Ms. Ray simply decided to attempt to present more evidence in support of her motion to dismiss.

To the extent that Ms. Ray seeks reargument, that branch of the motion is also denied.

Accordingly, it is hereby

ORDERED that the motion (MS009) by defendant Ray to vacate her default is granted to the extent that her default is vacated and she shall file her answer on or before June 1, 2022; and it is further

ORDERED that the motion (MS010) by defendant Ray to reargue and renew is denied; and it is further

ORDERED that the note of issue is hereby vacated and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, Ms. Ray shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk’s Office (60

Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further


ORDERED that there shall be an inquest at time of trial for the defendants who were previously held in default, or if the matter is resolved with respect to the appearing defendants prior to trial, then plaintiff shall file a note of issue for an inquest.

Remote Discovery Conference: July 21, 2022 at 10 a.m.

By July 14, 2022, please upload one of the following:

1. A fully executed discovery stipulation. If you timely upload this, it will be reviewed; if the court finds it satisfactory, then it will be so-ordered and uploaded. There will be no need for you to attend the above-scheduled conference and we will set the date for the next conference. If it is not satisfactory (such as being a repeat of the prior conference order), then the conference may be held or adjourned, as the Court deems appropriate.
2. A stipulation of partial agreement. Parties must stipulate to what they can agree and leave blanks for what they cannot. Parties must then submit a written explanation as to the disagreed portions. The Court will either decide the issue based on your written explanations, hold the conference or approve what you have agreed and instruct you to make a motion as to the disputed matters.
3. A letter indicating why you cannot agree to anything and identifying the areas in dispute.

*If nothing is timely submitted, then the conference will be adjourned. If you fail to timely submit one of the above for three consecutive conferences, your case will be dismissed.*

5/20/2022 DATE		 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" 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