

**State Farm Mut. Auto. Ins. Co. v Riverside Physical
Medicine, P.C.**

2022 NY Slip Op 32591(U)

August 2, 2022

Supreme Court, New York County

Docket Number: Index No. 160590/2020

Judge: William Perry

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

INDEX NO. 160590/2020

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

MOTION DATE 12/30/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

RIVERSIDE PHYSICAL MEDICINE, P.C.,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for JUDGMENT - DEFAULT

In this action seeking a trial de novo and declaratory relief, plaintiff State Farm Mutual Automobile Insurance Company (SFMAIC) moves for default judgment against defendant Riverside Physical Medicine, P.C. (RPM). RPM has not filed opposition.

On a motion for leave to enter a default judgment, "the applicant shall file proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due . . . by affidavit made by the party" (CPLR 3215 [f]). A defendant who has defaulted is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 71 [2003]).

CPLR 311

The court first turns to the issue of proof of service. CPLR 311 (a) (1) provides that personal service upon a corporation shall be made by delivering the summons to "an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by

appointment or by law to receive service.” A corporation may also be served pursuant to Business Corporation Law section 306 or 307. “The purpose of CPLR 311 (subd. 1) is to give the corporation notice of the commencement of the suit” (*Fashion Page, Ltd. v Zurich Ins. Co.*, 50 NY2d 265, 271-272 [1980] [internal citations omitted]).

In evaluating service, “the circumstances of the particular case must be weighed” (*id.* at 273). Generally, service of process will be sustained where a process server reasonably relies upon the representation of a corporate employee that they are authorized to accept service and where “service [was] made in a manner which, objectively viewed, [was] calculated to give the corporation fair notice” (*id.* at 272-273). “[A] process server’s affidavit, which state[s], *inter alia*, that personal service was effected by delivering a copy of the summons and complaint to an ‘authorized person,’ and provided a description of that person, constituted prima facie evidence of proper service pursuant to CPLR (a) (1)” (*Hayden v Southern Wine & Spirits of Upstate N. Y. Inc.*, 126 AD3d 673, 674 [2d Dept 2015]).

An affidavit of service which, on its face, shows that service is defective, is insufficient. For example, a plaintiff is not entitled to a default judgment where the affidavit of service “indicate[s] that service was not effectuated at the proper address” (*Nedeltsheva v MTE Transp. Corp.*, 157 AD3d 423, 423 [1st Dept 2018] [internal citation omitted]). Service also is insufficient where the person served is not authorized by law, appointment or representation to accept service on behalf of the corporation. See *Fashion Page, Ltd.*, 50 NY2d at 273 (service is insufficient where the summons “is delivered to a building receptionist, not employed by the defendant, without any inquiry as to whether she is a company employee); *Austrian Lance & Stewart, P.C. v Rockefeller Ctr.*, 163 AD2d 125, 128 (1st Dept 1990) (“A receptionist generally is not a person authorized to receive service for a corporate defendant” [internal citations omitted]).

The Affidavit of Service

Here, SFMAIC submits an affidavit of service sworn to on April 15, 2021 (NYSCEF Doc. No. [Doc] 3). The affidavit contains the following information. On March 25, 2021, at 12:06 P. M., at “255 Route 3, Secaucus, NJ 07094,” the deponent, a New Jersey resident, served the notice of electronic filing, the amended summons and complaint (documents) upon “Riverside Physical Medicine, P.C.” The box for “Corporation/Business/Government Agency.” bears a check mark. The deponent states that he delivered a true copy of the documents upon Riverside Physical Medicine, P.C. “personally”, which he knew to be the corporation described, and then leaves blank the line for the title or employment position of the person served on the corporation’s behalf. That portion of the line therefore reads as follows: “and knew said individual to be _____ thereof.”

The next section describes the individual’s age, ethnicity, gender, weight, height, hair, and eyes. The affidavit of service leaves blank the line that follows the language “Relationship: _____.” By “Other,” the deponent states “Felicia accepted the documents.” The next entry, titled “Service Details,” provides as follows: “Felicia was working the front desk of suite 104A for Riverside Medical Group Physical Therapy and accepted the documents.”

The affidavit of service does not indicate the position or title of “Felicia,” does not indicate that “Felicia” or someone else stated that “Felicia” was authorized to accept service for the defendant, and does not even indicate that “Felicia” was RPM’s employee.

This affidavit of service is insufficient for proof of service for a number of reasons, including the following.

Different Address

The location of service set forth in the affidavit of service differs from RPM's address as listed on the summons and complaint (Doc 1), the amended summons (Doc 2) and the affidavit of service for the instant motion (Doc 17). Plaintiff does not provide an explanation for this discrepancy. The submitted affidavit of service for the amended summons and complaint lists the location of service and RPM's address as "255 Route 3, Secaucus, NJ 07094" (the Secaucus address)." The summons and complaint and amended summons list RPM's address as 289 Market Street, Suite 2, Saddle Brook, New Jersey 07663 (the Saddle Brook address).¹ So too the affidavit of service for the request for judicial intervention, notice of motion, and motion, identifies the Saddle River address as RPM's address.

Additionally, the suite number and the name of the entity as indicated on the affidavit of service are different from those indicated on the summons, complaint and amended summons. The affidavit of service for the amended summons and complaint provides that "Felicia" was working the front desk of "suite 104A for Riverside Medical Group Physical Therapy." The summons and complaint and the amended summons, as well as the affidavit of service for the instant motion, list "Suite 2," and not suite 104A. Defendant's name in the pleadings and motion is Riverside Physical Medicine, P.C., not Riverside Medical Group Physical Therapy as indicated within the section for details of service.


¹ The court notes that the Saddle Brook address is also listed as defendant's address on the affidavit of service submitted by plaintiff in support of its default judgment motion against a number of defaulting defendants, including RPM, in the action captioned State Farm Mutual Automobile Insurance Company v A to Z Supplies Group Inc., et al., under Index No. 158308/2019. In that action, the court awarded default judgment by decision and order dated July 28, 2020. That order, *inter alia*, serves as the basis for the instant action. In contrast to the affidavit of service submitted with this action, the affidavit of service in the earlier action for service upon RPM identifies the full name of the person served and her position, and states that the process server informed the individual of the contents of the papers.

Service Not Authorized by Law, Appointment or Representation

The affidavit of service omits and leaves blank the position or job title of “Felicia,” and therefore fails to demonstrate, even on a prima facie basis, that service was effectuated upon a person authorized by law to accept service on behalf of RPM (*see* 311 [a] [1]). Nor does the affidavit of service indicate that “Felicia” or another individual stated to the process server that “Felicia” was authorized to accept service on behalf of RPM, or that an authorized person resisted service. The affidavit does not even state that “Felicia” was RPM’s employee (which, in any event, is by itself insufficient under these circumstances). Indeed, the affidavit of service states that Felicia “was working the front desk” for “Riverside Medical Group Physical Therapy,” an entity name that, while bearing some similarity to the name of defendant Riverside Physical Medicine, P.C., is not the same name. Merely that someone named “Felicia” who was working the front desk “accepted the documents,” without more, is insufficient.

The affidavit of service and the record are devoid of any showing that service was authorized by law, appointment, or representation. Under these circumstances, plaintiff has not set forth sufficient proof that service was made in a manner calculated to give the defendant fair notice. The affidavit of service is defective. Accordingly, it is

ORDERED that plaintiff’s motion for a default judgment against defendants is denied.

<u>8/2/2022</u> DATE					 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE