

Trupia v Ammar
2022 NY Slip Op 35207(U)
June 21, 2022
Supreme Court, Nassau County
Docket Number: Index No. 605893/21
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 3

JODI TRUPIA, as Administrator of the Estate of
GERARD P. TRUPIA, deceased, and JODI TRUPIA,
Individually,

Plaintiff,

-against-

Index No.: 605893/21
Motion Sequence...01
Motion Date...04/07/22

TAMESHWAR AMMAR, M.D. and AGE
MANAGEMENT ASSOCIATES OF NEW YORK LLC,

Defendants.

Papers Submitted:
Notice of Motion.....X

Upon the foregoing papers, the unopposed motion by the Plaintiff seeking an Order, pursuant to CPLR § 3215, granting a default judgment as against the Defendants, TAMESHWAR AMMAR, M.D. (“AMMAR”) and AGE MANAGEMENT ASSOCIATES OF NEW YORK LLC (“AGE MANAGEMENT”), is decided as provided herein.

In this medical malpractice and wrongful death action brought on behalf of the Estate of GERARD P. TRUPIA, deceased, the Plaintiff alleges that the decedent suffered serious and permanent injuries due to the negligence of the Defendants herein during a continued course of treatment from in or about January 2014 through on or about

July 17, 2019. It is alleged that as a result of the Defendants' negligence, the decedent suffered severe permanent injuries, including death.

The Plaintiff commenced this action on May 12, 2021, by the filing of a summons and verified complaint. Counsel for the Plaintiff submits proof that service of the summons and complaint was effectuated upon the Defendant, AMMAR, by personal service (*See* Exhibit "B"). Counsel also submits an affidavit of service reflecting that AGE MANAGEMENT, a limited liability company, was served via the Secretary of State.

Pursuant to CPLR § 3215, a plaintiff may move for a default judgment against a defendant who fails to answer or otherwise appear in the action within one year of the default. Pursuant to CPLR § 3215 (f), the movant must provide: (i) proof of service of the Summons and Complaint; (ii) an affidavit by the party setting forth the facts constituting the claim; (iii) proof of the default and/or amount due.

Here, the Plaintiff's motion has been filed within a year of the default. A copy of the Summons and Verified Complaint was duly served upon the Defendant, AMMAR, in accordance with the CPLR. Additionally, the Plaintiff, JODI TRUPIA, submitted a sworn affidavit setting forth the facts constituting the claim.

With respect to the Defendant, AGE MANAGEMENT, however, the Plaintiff failed to submit proof of compliance with CPLR 3215 (g)(4)(i) and (ii). In this regard, where a defendant is a domestic or authorized foreign corporation that was served pursuant to BCL § 306 (b), CPLR § 3215 (g)(4)(i) and (ii) requires that an affidavit be submitted demonstrating that the defaulting defendant was provided with additional notice of the summons and complaint and informed that service was originally effectuated

pursuant to BCL § 306. Such additional mailing must be made by first class mail upon the defaulting defendant-corporation at least twenty (20) days before the entry of judgment. Here, the Plaintiff has failed to comply with the additional notice requirements of CPLR § 3215(g)(4)(i) and (ii), with respect to the Defendant, AGE MANAGMENT. Thus, the Plaintiff's motion shall only be granted as to the Defendant, AMMAR, and with respect to the Defendant, AGE MANAGEMENT, the motion is denied, without prejudice, and with leave to renew, upon the presentment of proper proof.

Accordingly, it is hereby

ORDERED, that the branch of the unopposed motion by the Plaintiff seeking an Order, pursuant to CPLR § 3215, granting a default judgment as against the Defendant, TAMESHWAR AMMAR, M.D., is **GRANTED**; and it is further

ORDERED, the branch of the unopposed motion by the Plaintiff seeking an Order, pursuant to CPLR § 3215, granting a default judgment as against the Defendant, AGE MANAGEMENT ASSOCIATES OF NEW YORK LLC, is **DENIED**, without prejudice, and with leave to refile upon the presentment of proper proof. In the event the Plaintiff submits a motion to renew its application for a default judgment as against AGE MANAGEMENT, the motion must be submitted in accordance with CPLR § 2221; and it is further

ORDERED, that subject to the approval and the right of the Justice there presiding, and provided a Note of Issue has been filed at least twenty (20) days prior thereto, this matter shall be set down for an Inquest on December 6, 2022, at 2:00 p.m., IN-PERSON, in Part 3, before the Hon. Randy Sue Marber, to assess the appropriate sum

to be awarded to the Plaintiff by the Defendant, TAMESHWAR AMMAR, M.D.¹; and it is further

ORDERED, that counsel for the Plaintiff shall serve a copy of this Order with Notice of Entry upon the Defendants at their last known respective addresses(es) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, **AND** BY REGULAR MAIL, within twenty (20) days of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT**; and it is further

ORDERED, that a copy of this order shall be served on the Calendar Clerk along with the Note of Issue. The failure to file a Note of Issue as directed or appear as directed may be deemed an abandonment of the claims giving rise to the Inquest.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
June 21, 2022



Hon. Randy Sue Marber, J.S.C.

ENTERED

Jun 22 2022

NASSAU COUNTY
COUNTY CLERK'S OFFICE

¹ In the event that the Plaintiff timely renews the application for a default judgment as against AGE MANAGEMENT, and if such application is granted, then the Inquest scheduled herein shall also address the assessment of damages pertaining to AGE MANAGEMENT.