

**Infinity Auto Ins. Co. v
Neofitos Stefanides, MD, PC**

2023 NY Slip Op 32571(U)

July 25, 2023

Supreme Court, New York County

Docket Number: Index No. 155683/2021

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

INFINITY AUTO INSURANCE COMPANY,

Plaintiff,

- v -

NEOFITOS STEFANIDES, MD, PC, NY PHYSICAL
THERAPY & WELLNESS, CLARIBE CABREAS
SANDOVAL, LEONARDO CORREAS

Defendant.

-----X

INDEX NO. 155683/2021

MOTION DATE 04/03/2023

MOTION SEQ. NO. 001

ORDER - DEFAULT JUDGMENT

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

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, there being no opposition and good cause having been shown, Plaintiff Infinity Auto Insurance Company’s (“Plaintiff”) motion for default judgment against Defendant Neofitos Stefanides, MC, PC (the “Defaulting Defendant”) is granted in accordance with the annexed order.

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulting defendant’s failure to answer or appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of default judgment only need to allege enough facts to allow a court to assess where a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that “defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]).

Plaintiff's motion was not made within one year of the default, as required under CPLR

3215. CPLR 3215(c) states, in relevant part:

[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.

As an excuse for the delay in pursuing default judgment, Plaintiff contends that they were attempting, without success, to effectuate service upon Defendants Claribe Cabreas Sandoval and Leonardo Correias prior to making a motion for default so as to handle the matter efficiently (NYSCEF Doc. 6 at ¶10). Even in instances where a "plaintiff's excuse for failing to move for a default judgment within one year of defendants' default is not entirely compelling, it must, however, be weighed against the merits of plaintiff's claim and the prejudice to defendants" (*Fling v Integrity Bus. Solutions, Inc.* 166 AD3d 458 [1st Dept 2018]). Given the strong public policy in favor of deciding cases on the merits, where, like here, a plaintiff provides an affidavit setting out a meritorious action and the defendant offers no evidence of any prejudice from the delay, the plaintiff's complaint should not be dismissed as abandoned (*Id.* at 458-459).

The Court finds that Plaintiff has satisfied proof of service by submitting an Affidavit of Service (NYSCEF Doc. 2) evidencing service of the of the Summons and Complaint upon the Defaulting Defendant through the Secretary of State. Plaintiff has also satisfied its minimal burden of proving the facts constituting its claim by submitting an affidavit of merit (NYSCEF Doc. 11). Finally, the Defaulting Defendant has failed to appear despite its time for doing so having expired. Therefore, entry of default judgment is appropriate.

[The remainder of this page is intentionally left blank]

Accordingly, it is hereby,

ORDERED that Plaintiff Infinity Auto Insurance Company’s motion for default judgment against Defendant Neofitos Stefanides, MC, PC is granted in accordance with the annexed order; and it is further

ORDERED that the remaining parties in this case are directed to submit a proposed preliminary conference order to the Court on or before August 4, 2023 via e-mail to SFC-Part33-Clerk@nycourts.gov. If the parties are unable to agree to a proposed preliminary conference order, the parties are directed to appear for an in-person preliminary conference with the Court on August 9, 2023 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all defendants to this action, including the Defaulting Defendant via first-class mail at their last known business address; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/25/2023
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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