

Ventura v Singh

2024 NY Slip Op 34968(U)

November 25, 2024

Supreme Court, Bronx County

Docket Number: Index No. 21656/2020E

Judge: Veronica G. Hummel

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IAS PART 20

JOHAN VENTURA ,

Plaintiff,

-against-

SURINDER SINGH,

Defendant.

DECISION/ORDER
INDEX NO. 21656/2020E
Motion Seq. 3

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Hon. Veronica G. Hummel, A.J.S.C.:

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed in NYSCEF as submitted by the parties regarding the motion by plaintiff JOHAN VENTURA [Mot. Seq. 3], made pursuant to CPLR 5015(a)(1), for an order vacating the court’s previous order, dated November 16, 2022, (the Prior Order), that entered a decision granting defendant SURINDER SINGH’S motion [Mot. Seq.1], seeking an order dismissing the complaint on the ground that plaintiff did not sustain a “serious injury” as defined by Insurance Law.

In this personal injury action, plaintiff alleges that plaintiff sustained serious personal injuries as a result of an automobile accident that took place on January 25, 2028.(the Accident). On November 14, 2022, the court issued the Prior Order dismissing the complaint on default.

In order to obtain vacatur of a default judgment under CPLR 5015(a)(1), a party must demonstrate a reasonable excuse for the default and the existence of a potentially meritorious defense or claim. *Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co.*, 67 N.Y.2d

138 (1986); *Li Fen Li v. Cannon, Co.*, 155 A.D.3d 858 (2d Dep't 2017); *Gurin v. Pogge*, 112 A.D.3d 1028 (3d Dep't 2013). The determination of whether to vacate a default judgment under CPLR 5015 rests within the sound discretion of the Supreme Court, although a disposition on the merits is strongly favored. *see generally Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co., supra*; *Inwald Enterprises, LLC v. Aloha Energy*, 153 A.D.3d 1008 (3d Dep't 2017). Accordingly, a motion to vacate a prior judgment is addressed to the court's sound discretion subject to reversal only where there has been a clear abuse of discretion (*Inwald Enterprises, LLC v. Aloha Energy, supra*; *Carlson v. Dorsey*, 161 A.D.3d 1317 (3d Dep't 2018)) and actions should be resolved on the merits when circumstances justify the same. *see generally Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co., supra*. Whether there is a reasonable excuse for a default is a discretionary, *sui generis* determination to be made by the court based on all relevant factors, including the extent of the delay, whether there has been prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits. *Inwald Enterprises LLC v. Aloha Energy, supra*.

Applying these legal principles to the facts presented here, the motion is denied.

Here, plaintiff fails to demonstrate a reasonable excuse for the default based on law office failure. In order for a law office failure to constitute a reasonable excuse, the movant must submit facts explaining the reason for the default, and it is within the court's sound discretion to determine whether the excuse for the default is sufficient. *Chevalier v. 368 E.148th St. Assoc., LLC*, 80 A.D.3d 411, 413 (1st Dep't 2011); *see also Tandy Computer Leasing v Video X Home Library*, 124 A.D.2d 530, 531 (1st Dep't 1986). The Prior Order was issued on November 16, 2022. Plaintiff did not move to vacate the default for almost two

years, in August 2024. Having failed to provide a reasonable excuse for the undue delay in moving for the relief sought, plaintiff's allegations of law office failure under the facts presented here are inadequate.

Plaintiff also fails to demonstrate that plaintiff has a potentially meritorious cause of action and should not be deprived of her day in court by her counsel's inadvertent error. *See generally Feliciano v. Los Chavales #2 Mini Market Corp.*, 209 A.D.3d 463 (1st Dep't 2022); *Santiago v. Valentin*, 125 A.D.3d 459, 460 (1st Dep't 2015). On the motion, plaintiff fails to provide any competent evidence that plaintiff suffered a serious injury. Of note, there are no medical records, expert reports, or affidavit of merits submitted on the moving papers. As such, plaintiff fails to make a *prima facie* showing of merit.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied.

Accordingly, it is hereby

ORDERED that the motion by plaintiff JOHAN VENTURA [Mot. Seq. 3], made pursuant to CPLR 5015(a)(1), for an order vacating the court's previous order, dated November 16, 2022, (the Prior Order), that entered a decision granting defendant SURINDER SINGH'S motion [Mot. Seq.1], seeking an order dismissing the complaint on the ground that plaintiff did not sustain a "serious injury" as defined by Insurance Law is denied; and it is further

ORDERED that the Clerk shall mark motion sequence 3 decided and the action disposed in all court records.

The foregoing constitutes the decision and order of the Court.

Dated: November 25, 2024

ENTER,

Hon. *Veronica G. Hummel*

HON. VERONICA G. HUMMEL, A.S.C.J.

1. CHECK CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
ONE.....

2. MOTION 3 IS..... GRANTED DENIED OTHER