

Progressive Cas. Ins. Co. v Healthcare Horizons Med., P.C.
2024 NY Slip Op 35696(U)
April 8, 2024
Supreme Court, Nassau County
Docket Number: Index No. 602116/22
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 2

X
PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE CLASSIC INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE GARDEN STATE INSURANCE
COMPANY, PROGRESSIVE GULF INSURANCE
COMPANY, PROGRESSIVE MAX INSURANCE
COMPANY, PROGRESSIVE PREMIER INSURANCE
COMPANY OF ILLINOIS and
PROGRESSIVE SPECIALTY INSURANCE COMPANY,

Plaintiffs,

-against-

Index No.: 602116/22
Motion Sequence...02
Motion Date...12/15/23
XXX

HEALTHCARE HORIZONS MEDICAL, P.C.,

Defendant.

X
Papers Submitted:
Notice of Motion.....x
Affirmation in Opposition.....x

Upon the foregoing papers, the motion by the Defendant, HEALTHCARE HORIZONS MEDICAL, P.C., seeking an Order vacating and setting aside the Judgment entered against it upon default on October 12, 2022, pursuant to CPLR § 5015 (a)(1), and upon vacatur, compelling the Plaintiff to accept the Defendant's answer, is decided as provided herein.

The Plaintiffs commenced this action on or about February 14, 2022, by the filing of a Summons and Verified Complaint. With respect to the Plaintiffs' underlying motion (Seq. 01) seeking the entry of a default judgment against the Defendant, the Plaintiffs submitted proof that on March 2, 2022, the Plaintiffs effectuated service upon the Defendant, HEALTHCARE HORIZONS, via the Secretary of State pursuant to BCL §306. In addition, proof was submitted demonstrating that the Plaintiffs served a Notice of Service pursuant to BCL 306(b) on March 23, 2022, by mailing an additional copy of the Summons and Verified Complaint to its last known address located at 68 South Service Road, Suite 100, Melville, New York 11747. Moreover, the Plaintiffs complied with the additional mailing requirement pursuant to CPLR § 3215(g)(4)(i) and CPLR § 3215 (g)(4)(ii). Additionally, the Plaintiffs submitted a sworn affidavit setting forth the facts constituting the claim.

As such, by Short Form Order dated August 4, 2022, and entered on August 5, 2022, this Court granted the Plaintiffs' unopposed motion (Seq. 01) for a default judgment (*See* NYSCEF Doc. No. 13). A Judgment was subsequently entered on October 12, 2022, as against the Defendant and in favor of the Plaintiffs (*See* NYSCEF Doc. No. 16). The Judgment was then served upon the Defendant with notice of entry and the Plaintiffs filed proof of service of same (*See* NYSCEF Doc. No. 17).

The Defendant now moves to vacate the default judgment, arguing that it did not receive timely notice of the instant action. In support of its motion, the Defendant proffers the Affidavit of Bo Headlam, M.D., the principal of HEALTHCARE HORIZONS (*See* Dr. Headlam Affidavit attached to the Notice of Motion). Mr. Headlam

attests that he did not receive the summons and complaint or the Plaintiffs' motion for a default judgment. Dr. Headlam confirms that the address on file with the Secretary of State for service of process is 68 South Service Road, Suite 100, Melville, New York – notably the same address at which all documents were previously served by Plaintiffs' counsel. He claims that all mail is handled and sorted by staff of Regus Office Space, who are instructed to forward any mail received for HEALTHCARE HORIZONS to another address in New York, New York. Dr. Headlam claims that he then personally receives and reviews any mail forwarded to the New York, New York address on behalf of the Defendant. Lastly, Dr. Headlam claims that neither he nor counsel for the Defendant, The Rybak Firm, PLLC, received any notice of the pleadings or the motion for a default judgment until approximately early November 2022, following notice of entry of the Judgment entered against the Defendant.

In opposition, counsel for the Plaintiffs argues that they properly served the Defendant with the Summons and Verified Complaint pursuant to BCL § 306 (b). Counsel for the Plaintiffs notes that the address on file with the Secretary of State is the same address attested to by Dr. Headlam as the office location of HEALTHCARE HORIZONS. Moreover, counsel for the Plaintiffs highlights that, prior to moving for a default judgment against the Defendant, the Plaintiffs served the Defendant with a default notices as well as the EUO requests. Counsel for the Plaintiffs argues that, despite all of the above notices, the Defendant failed to do anything for nearly a year and a half after Judgment was entered against it.

The Defendant did not submit reply papers in response to Plaintiffs'

opposition.

To vacate a default judgment, the defaulting party must demonstrate that they had a reasonable excuse for the delay in responding to the action, that they have a meritorious defense, that the default was not willful and that the plaintiff will not be prejudiced (*See Lichtman v. Sears, Roebuck & Co.*, 236 A.D.2d 373 [2d Dept. 1997]). A default by a Defendant should be vacated where there is “minimal prejudice caused by the defendant’s short delay in answering, as well as the public policy in favor of resolving a case on the merits” (*See Classie v. Stratton Oakmont, Inc.*, 236 A.D.2d 505 [2d Dept. 1997]). Furthermore, “it is within the sound discretion of the Court to determine whether the proffered excuse and the statement of the merits are sufficient” (*See Navarro v. A. Trenkman Estate, Inc.*, 279 A.D.2d 257 [1st Dept. 2001] citing *Mediavilla v. Gurman*, 272 A.D.2d 146 [1st Dept. 2001]). The court also has discretion to consider whether the Defendant acted promptly in curing the default without delay or prejudice to the Plaintiff (*See Statewide Ins. Co. v. Bradham*, 301 A.D.2d 606 [2d Dept. 2003]).

The Defendant herein has failed to establish a credible excuse for failing to have appeared in this action. The Defendant’s conclusory assertion that it was not served with a Summons and Complaint by the Secretary of State lacks a cogent basis. Unlike the case law cited by the Defendant, there is no evidence that the Secretary of State had an erroneous address for HEALTHCARE HORIZONS when it served process. Rather, the address on file with the Secretary of State, as well as the address indicated in the various Affidavits of Service proffered by the Plaintiffs, is identical to that referenced by Dr. Headlam as the office location of HEALTHCARE HORIZONS in his Affidavit.

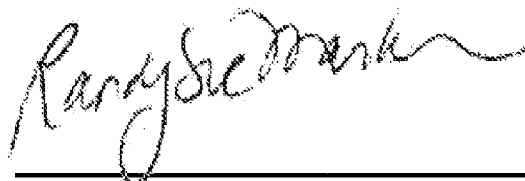
Moreover, this Court takes note that Dr. Headlam does not deny receiving EUO notices, a copy of the RJI, a copy of the Order granting default against it, with notice of entry, or a copy of the Judgment with notice of entry. Therefore, the excuse that the Defendant did not have actual notice of the instant action until November 2022 lacks merit. Lastly, although the Court need not determine the issue of a meritorious defense in that a reasonable excuse for failing to answer the complaint was not provided, the Court does not find the defenses asserted by the Defendant to have been supported by sufficient evidence or persuasive arguments.

Accordingly, it is hereby

ORDERED, that the Defendant's motion to vacate the default judgment is
DENIED.

This decision constitutes the decision and order of the Court.

DATED: Mineola, New York
April 8, 2024



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

ENTERED

Apr 12 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE