Gorobchenko v Greuner
2025 NY Slip Op 32628(U)
July 14, 2025
Supreme Court, New York County
Docket Number: Index No. 805258/2023
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** — ***Justice*** — **PART** **56M**

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GANNA GOROBCHENKO and VADIM MATS,

Plaintiffs,

- v -

DAVID GREUNER, M.D., VICTOR I. ROSENBERG, M.D., GLENYS HERNANDEZ, P.A., DAVID GREUNER, M.D., P.C., NYC SURGICAL ASSOCIATES, GREUNER INPATIENT SURGICAL NY, P.C., GREUNER MEDICAL P.C., CITY SURGICAL CARE OF NJ, and GREUNER MEDICAL OF NJ, P.C.,

Defendants.

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INDEX NO. 805258/2023

MOTION DATE 04/16/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - DEFAULT.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, negligent hiring, training, supervision, and retention of health-care employees, gross negligence, fraud, and loss of spousal consortium, the plaintiffs move: (a) pursuant to CPLR 3215 for leave to enter a default judgment on the issue of liability against the defendants David Greuner, M.D, David Greuner, M.D., P.C., Greuner Inpatient Surgical NY, P.C., Greuner Medical, P.C., and Greuner Medical of NJ, P.C. (collectively the Greuner defendants), and (b) pursuant to CPLR 305(c) and 3025(b) for leave to amend the caption of the summons and complaint to reflect that the name of the plaintiff Ganna Gorobchenko legally has been changed Anna Mats. Although the Greuner defendants do not oppose the motion, the motion is granted only to the extent that the plaintiffs are granted leave to amend the caption to reflect that Gorobchenko's name has legally been changed to Anna Mats. The motion is otherwise denied, albeit without prejudice to renewal

upon proper papers with respect to the relief sought against David Greuner, M.D, David Greuner, M.D., P.C., Greuner Inpatient Surgical NY, P.C., and Greuner Medical, P.C., as explained below, and denied with prejudice as to Greuner Medical of NJ, P.C.

Where a plaintiff moves for leave to enter a default judgment, he or she must submit proof of service of the summons and complaint upon the defaulting defendants, proof of the defendants' defaults, and proof of the facts constituting the claim or claims (*see* CPLR 3215[f]; *Woodson v Mendon Leasing Corp*., 100 NY2d 62, 70-71 [2003]; *Gray v Doyle*, 170 AD3d 969, 971 [2d Dept 2019]; *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]; *Atlantic Cas. Ins. Co. v RJNJ Services, Inc*. 89 AD3d 649 [2d Dept 2011]; *see also Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 [2013]).

According to the relevant affidavit of service that was executed and filed by the plaintiff's process server, a copy of the summons and complaint in this action was served upon the defendant David Greuner, M.D., on June 12, 2023, at 3:00 p.m., by personally delivering those papers to him at 124 East 13th Street, Lobby, New York, New York 10003. In three additional affidavits of service, another process server averred that copies of the summons and complaint were also served upon David Greuner, M.D., P.C., Greuner Inpatient Surgical NY, P.C., and Greuner Medical, P.C., on May 11, 2023, by personal delivery of two copies of both of those documents to the New York State Secretary of State, and the payment of the statutory fees. The record thus reflects that Greuner was properly served pursuant to CPLR 308(1), and that those corporate Greuner defendants were properly served with the summons and complaint in accordance with CPLR 311(a)(1) and Business Corporation Law § 306.[1]

[1] The plaintiffs failed to establish that they served process upon the defendant Greuner Medical of NJ, P.C., within the time required by CPLR 306-b and, hence, that branch of their motion which is for leave to enter a default judgment on the issue of liability as against that defendant must be denied on that ground alone.

A process server's affidavit of service is prima facie evidence of proper service (*see Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006]). Inasmuch as Greuner was served with process via personal delivery on June 12, 2023, he was obligated to answer, move with respect to the complaint, or otherwise appear in the action on or before the first business date 20 days thereafter (*see* CPLR 3012[a]; General Construction Law § 25-a), that is, by July 3, 2023 (*see* General Construction Law § 20). The affirmation of the plaintiffs' attorney established that Gruener did not do so by July 3, 2023, and, hence, that he was in default as of July 5, 2024, the first business date thereafter (*see* General Construction Law § 25-a). In addition, inasmuch as David Greuner, M.D., P.C., Greuner Inpatient Surgical NY, P.C., and Greuner Medical, P.C., were served via delivery of process to the Secretary of State on May 11, 2023 and, thus, not via personal delivery, those defendants were obligated to answer, move with respect to the complaint, or otherwise appear in the action on or before the first business date 30 days thereafter (*see* CPLR 3012[c]; General Construction Law § 25-a), that is, by June 12, 2023 (*see* General Construction Law § 20). The affirmation of the plaintiffs' attorney established that those corporate defendants did not do so by June 12, 2023, and, hence, that they were in default as of June 13, 2023. Moreover, the plaintiffs made the instant motion within one year of those defaults (*see* CPLR 3215[c]) and, thus, the motion is timely.

With respect to the proof of the facts constituting the claim, however,

> "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action (*see*, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22-3215.27). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts"

(*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]; *see Martinez v Reiner*, 104 AD3d 477, 478 [1st Dept 2013]; *Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Stated another way, while the "quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be

proffered" (*Guzetti v City of New York*, 32 AD3d 234, 236 [1st Dept 2006]). In other words, the proof submitted must establish a prima facie case (*see id*.; *Silberstein v Presbyterian Hosp*., 95 AD2d 773 [2d Dept 1983]). "Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default" (*Green v Dolphy Constr. Co*., 187 AD2d 635, 636 [2d Dept 1992]; *see Walley v Leatherstocking Healthcare, LLC*, 79 AD3d 1236, 1238 [3d Dept 2010]). In moving for leave to enter a default judgment, the plaintiff must "state a viable cause of action" (*Fappiano v City of New York*, 5 AD3d 627, 628 [2d Dept 2004]). In evaluating whether the plaintiff has fulfilled this obligation, the defendant, as the defaulting party, 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]). The court, however, must still reach the legal conclusion that those factual allegations establish a prima facie case (*see Matter of Dyno v Rose*, 260 AD2d 694, 698 [3d Dept 1999]).

Proof that the plaintiff has submitted "enough facts to enable [the] court to determine that a viable" cause of action exists (*Woodson v Mendon Leasing Corp*., 100 NY2d at 71; *see Gray v Doyle*, 170 AD3d at 971) may be established by an affidavit of a party or someone with knowledge, authenticated documentary proof, or by a complaint verified by the plaintiff that sufficiently details the facts and the basis for the defendant's liability (*see* CPLR 105[u]; *Woodson v Mendon Leasing Corp*., 100 NY2d at 71; *Gray v Doyle*, 170 AD3d at 971; *Voelker v Bodum USA, Inc*., 149 AD3d 587, 587 [1st Dept 2017]; *Al Fayed v Barak*, 39 AD3d 371, 371 [1st Dept 2007]; *see also Michael v Atlas Restoration Corp*., 159 AD3d 980, 982 [2d Dept 2018]; *Zino v Joab Taxi, Inc*., 20 AD3d 521, 522 [2d Dept 2005]; *see generally Mitrani Plasterers Co., Inc. v SCG Contr. Corp*., 97 AD3d 552, 553 [2d Dept 2012]). For purposes of CPLR 3215, a complaint verified by a party may be employed as proof of the facts constituting the claim (*see* CPLR 105[u]), but only where it sets forth sufficient, detailed evidentiary facts, rather than mere conclusions (*see Celnick v Freitag*, 242 AD2d 436, 437 [1st Dept 1997]). A verified complaint

that is conclusory in nature and devoid of factual allegations constituting the claim is insufficient to demonstrate the requisite proof (*see Cohen v Schupler*, 51 AD3d 706, 707 [2d Dept 2008]; *Luna v Luna*, 263 AD2d 470 [2d Dept 1999]). In other words, the verified complaint must "set forth the facts constituting the alleged negligence" (*Beaton v Transit Facility Corp*., 14 AD3d 637, 637 [2d Dept 2005]) or wrongdoing.

The complaint in this action, however, was verified only by the plaintiffs' attorney and, while the Gorobchenko submitted her own affidavit, she did not attest to any actual facts underlying the treatment and care that the Greuner defendants rendered to her, or any other facts underlying the fraud, gross negligence, lack of informed consent, negligent hiring, training, supervision, and retention, or other causes of action. Rather, she simply averred that the Greuner defendants were in default, and did not state what it was that actually constituted such malpractice, fraud, gross negligence, lack of informed consent, and negligent hiring, training, supervision, and retention.

Nor, in any event, was Gorobchenko qualified to provide full proof of such facts in connection with the malpractice, lack of informed consent, negligent hiring, training, supervision, and retention, and gross negligence causes of action. Crucially, in the context of a medical malpractice action, an affidavit or affirmation of merit from an expert is required on a CPLR 3215 motion unless the matters alleged are within the ordinary experience and knowledge of a lay person (*see Fiore v Galang*, 64 NY2d 999, 1000-1001 [1985]; *Bollinger v Mark Mordechai Liechtung, DMD, P.C.*, 2023 NY Slip Op 31537[U], *5, 2023 NY Misc LEXIS 2231, *6 [Sup Ct, N.Y. County, May 5, 2023] [Kelley, J.]; *Checo v Mwando*, 2022 NY Slip Op 31223[U], *4, 2022 NY Misc LEXIS 1865, *5 [Sup Ct, N.Y. County, Apr. 7, 2022] [Kelley, J.]; *Garcia v Solomon*, 2020 NY Misc LEXIS 17635, *2 [Sup Ct, Bronx County, Jun. 19, 2020]; *Charles v Wolfson*, 62 Misc 3d 1224[A], 2019 NY Slip Op 50251[U], *1, 2019 NY Misc LEXIS 866, *3 [Sup Ct, Bronx County, Mar 6, 2019]). Here, the quality and propriety of the medical services rendered to Gorobchenko, and whether they comported with the applicable standards of care, are not within

the ordinary experience and knowledge of a lay person, but can only be assessed by a physician, particularly because the primary allegations here are that the Greuner defendants' malpractice arose from their failure to render proper treatment to Gorobchenko. Specifically, the plaintiffs alleged in her bills of particulars that the treatment rendered by most of the defendants to Gorobchenko was unconnected to a diagnosis of pelvic congestion, despite those defendants' knowledge that she had, in fact, been diagnosed as suffering from that condition since she had suffered from the embolization of hepatic hemangiomas and a stent had been inserted in her external iliac vein. They further alleged that the Greuner defendants misdiagnosed her with arteriovenous malformations, thus providing unnecessary medical care and treatment for that condition. Since the plaintiffs did not submit an expert affirmation or affidavit to establish that those services deviated from an established standard of care, they have failed to establish their entitlement to a default judgment.

Moreover, a complaint alleging a cause of action sounding in fraud must sufficiently detail the allegedly fraudulent conduct (*see* CPLR 3016; *Pludeman v Northern Leasing Sys., Inc.,* 10 NY3d 486, 491-492 [2008]), and, although that pleading requirement "should not be confused with unassailable proof of fraud" (*Pludeman v Northern Leasing Sys., Inc.,* 10 NY3d at 492; *see Sargiss v Magarelli,* 12 NY3d 527, 530-531 [2009]), the plaintiffs have submitted no admissible proof whatsoever that the Greuner defendants committed fraud, let alone any of the other tortious acts complained of here.

In light of the foregoing, the plaintiffs have not established their entitlement to the entry of a default judgment against any of the Greuner defendants.

Leave to amend a pleading is to be freely given absent prejudice or surprise resulting from the amendment, provided that the evidence submitted in support of the motion indicates that the proposed amendment may have merit (*see* CPLR 3025[b]; *McCaskey, Davies and Assocs., Inc v New York City Health & Hospitals Corp.,* 59 NY2d 755 [1983]; *360 West 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552 [1st Dept 2011]; *Smith-Hoy v AMC Prop.*

Evaluations, Inc., 52 AD3d 809 [1st Dept 2008]). This rule is particularly applicable where a party seeks merely to amend a caption with respect to the name of a party (*see Clarke v Laidlaw Tr., Inc.,* 125 AD3d 920, 922-923 [2d Dept 2015]). Since Gorobchenko established that her legal name has changed since the plaintiffs commenced this action, that branch of the plaintiffs' motion seeking leave to amend the caption is granted.

Accordingly, it is,

ORDERED that the plaintiffs' motion is granted to the extent that they are granted leave to amend the caption to reflect that the name of the plaintiff Ganna Gorobchenko legally has been changed to Anna Mats, the caption is hereby amended accordingly, and the motion is otherwise denied, without prejudice to renewal upon proper papers in connection with the relief that the plaintiffs sought against the defendants David Greuner, M.D, David Greuner, M.D., P.C., Greuner Inpatient Surgical NY, P.C., and Greuner Medical, P.C., which papers shall include an expert affirmation or affidavit from an appropriate health-care professional, who shall render an opinion that those defendants committed malpractice that proximately caused the injuries claimed by the plaintiffs here, and with prejudice in connection with the relief sought against the defendant Greuner Medical of NJ, P.C.; and it is further,

ORDERED that the caption of the action is amended to read as follows:

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ANNA MATS and VADIM MATS,

Plaintiffs,

v

DAVID GREUNER, M.D., VICTOR I. ROSENBERG, M.D.,
GLENYS HERNANDEZ, P.A., DAVID GREUNER, M.D., P.C.,
NYC SURGICAL ASSOCIATES, GREUNER INPATIENT
SURGICAL NY, P.C., GREUNER MEDICAL P.C., CITY
SURGICAL CARE OF NJ, and GREUNER MEDICAL OF NJ, P.C.,

Defendants.

--x;

and it is further,

ORDERED that, within 15 days of the entry of this decision and order, the plaintiffs shall serve a copy of this decision and order upon both the County Clerk and the Clerk of the General Clerk's Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the "E-Filing" page on the court's website, and, to comply with those procedures, the plaintiff shall (1) upload the decision and order to the NYSCEF system under document title "SERVICE ON SUPREME COURT CLERK (GENL CLERK) W/COPY OF ORDER" ***AND*** (2) separately file and upload the notice required by CPLR 8019(c) in a completed Form EF-22, along with a copy of the decision and order, under document title "NOTICE TO COUNTY CLERK CPLR 8019(C)," and the County Clerk and all appropriate court support offices shall thereupon amend the court records accordingly.

This constitutes the Decision and Order of the court.

7/14/2025
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:	☐ **CASE DISPOSED**		☒ **NON-FINAL DISPOSITION**		
	☐ **GRANTED**	☐ **DENIED**	☒ **GRANTED IN PART**	☐ **OTHER**	
APPLICATION:	☐ **SETTLE ORDER**		☐ **SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐ **INCLUDES TRANSFER/REASSIGN**		☐ **FIDUCIARY APPOINTMENT**	☐ **REFERENCE**	