

Francois v Sharma

2025 NY Slip Op 34770(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 805130/2025

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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BIANCA MAYARD FRANCOIS,

Plaintiff,

- v -

GEETA SHARMA, M.D., and DOWNTOWN WOMEN
OB/GYN ASSOCIATES, LLP,

Defendants.

-----X

INDEX NO. 805130/2025

MOTION DATE 08/18/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15 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, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default judgment on the issue of liability against the defendant Geeta Sharma, M.D. Although no party opposes the motion, the motion is denied, without prejudice to renewal upon proper papers that include an expert affirmation or affidavit from a physician.

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]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]; *Gray v Doyle*, 170 AD3d 969, 971 [2d Dept 2019]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]; *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.* 89 AD3d 649, 651 [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 by the plaintiff's process server and filed with the court, a copy of the summons and complaint in this action was served upon Sharma (a) by delivering a copy of the summons and complaint on May 22, 2025 to Sharma's coworker, Lisette Torres, at Sharma's actual place of business, located at 568 Broadway, Suite 304, New York, New York 10012, (b) by mailing additional copies thereof to Sharma on May 23, 2025 at that same address in a properly addressed and marked envelope, and (c) by filing an affidavit of service referable to the delivery and mailing on May 29, 2025 (see CPLR 308[2]). Inasmuch as 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]), and Sharma did not oppose this motion, the plaintiff made a prima facie showing that Sharma was properly served with process pursuant to the CPLR. Service upon Sharma was "completed" on the first business day after 10 days had lapsed following the filing of the affidavit of service, that is, on June 9, 2025 (see CPLR 308[2]; General Construction Law § 25-a). Sharma thus was required to answer, appear, or move with respect to the complaint no later than the first business day 30 days subsequent to June 9, 2025, or by July 9, 2025 (see CPLR 3012[c]). The affirmation of the plaintiff's attorney established that Sharma did not do so by July 9, 2025, and, hence, that she was in default as of July 10, 2025. Moreover, the plaintiff made the instant motion within one year of that default (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 a 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) usually 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 plaintiff’s attorney. Moreover, while the plaintiff submitted her own affirmation, she did not attest to any actual facts underlying the treatment and care that Sharma rendered to her, except for general allegations that, from April 4, 2024, through September 26, 2024, she received gynecological services from Sharma, that Sharma failed properly to detect and diagnose abnormalities in placental size during routine prenatal ultrasounds, such as a thin placenta or decreased placental volume, that Sharma further failed to classify her pregnancy as “high-risk,” and that, as a consequence, she was caused to suffer a miscarriage late in her third trimester of pregnancy.

The plaintiff, however, was not qualified to provide full proof of such facts and opinions to the extent that they apply to her medical malpractice cause 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]).

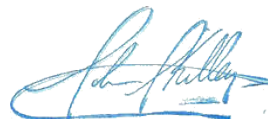
Here, the quality and propriety of the medical services that Sharma rendered to the plaintiff, and whether Sharma comported with the applicable standards of care in rendering them, are not within the ordinary experience and knowledge of a lay person, but can only be assessed by a physician. This is so because the primary allegations made by the plaintiff here is that Sharma departed from good and accepted gynecological practice in rendering treatment to her and that those departures caused or contributed to a miscarriage. The plaintiff made no specific allegations as to the nature and extent of that treatment, the particulars of the examinations and diagnostic testing that Sharma actually performed, the reasons why the evaluations of any test results that she conducted were improperly obtained, or any *medical* basis for the claim that any departures in these respects caused or contributed the miscarriage. Even had the plaintiff made such allegations, a physician’s affirmation or affidavit nonetheless is required to establish the facts underlying the medical malpractice cause of action.

Accordingly, it is,

ORDERED that the plaintiff’s motion is denied, without prejudice to renewal upon proper papers, which shall include an expert affirmation or affidavit from an appropriate healthcare professional, who shall render a sufficiently detailed opinion concluding that the defendant Geeta Sharma, M.D., committed medical malpractice, explaining in what manner Geeta Sharma, M.D., committed malpractice, and concluding that this malpractice proximately caused the injuries claimed by the plaintiff here.

This constitutes the Decision and Order of the court.

12/9/2025
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