

U-Haul Co. of N.Y. & Vt. v Carrasco
2025 NY Slip Op 35646(U)
January 21, 2025
Supreme Court, Bronx County
Docket Number: Index No. 806055/2022E
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

-----X
U-HAUL CO. OF NEW YORK AND VERMONT, INC.,
and U-HAUL CO. OF ARIZONA,

Plaintiffs,

Index No. 806055/2022E

-against-

DECISION/ORDER
Motion Seq. 2

SAM CARRASCO,
MD AWAL AKA ABDUL AWAL,
CYNTHIA A. MORAN,
ALBANIA ESTHER POLANCO, and
AMERICAN TRANSIT INSURANCE COMPANY,

Defendants.

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

In accordance with CPLR 2219 (a), the decision herein is made upon consideration of all papers filed in NYSCEF regarding the motion of plaintiffs U-HAUL CO. OF NEW YORK AND VERMONT, INC., and U-HAUL CO. OF ARIZONA ("Plaintiffs") [Mot. Seq.2] for an order, pursuant to CPLR 3215, granting a default judgment in favor of Plaintiffs as against defendants SAM CARRASCO, MD AWAL AKA ABDUL AWAL, CYNTHIA A. MORAN, ALBANIA ESTHER POLANCO, and AMERICAN TRANSIT INSURANCE COMPANY ("ATIC").

This action arises from an alleged motor vehicle collision that occurred on or about October 12, 2021 ("the Accident"). The Accident involved a U-Haul rental truck rented by and reportedly operated by defendant Carrasco, and a vehicle owned and operated by defendant Awal. Defendant Moran and Polanco were passengers in the vehicle. The

Accident occurred on West 181st Street, New York, N.Y. Defendant ATIC is added to this action as necessary party who may be affected by the outcome of this matter.

The Summons and Complaint was filed on April 19, 2022, but never served.

The Supplemental Summons and Complaint was filed on March 30, 2023. The complaint includes causes of action seeking a declaration that the Rental Contract, issued by Plaintiffs, does not provide coverage for defendant Carrasco's accident or for him individually. Plaintiffs argue that, therefore, they have no duty to defend or indemnify defendant Carrasco and that Carrasco is legally responsible under the Rental Contract for the property damages to the U-Haul rental truck. Plaintiffs seek declaratory relief and costs, including the costs of the damage to the U-Haul rental truck.

Plaintiffs now seek an order granting default judgment against all defendants.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, a plaintiff is required to submit proof of service of the summons and complaint, the facts constituting the cause of action, and the defendant's default in answering or appearing. *see* CPLR 3215; *Clarke v. Liberty Mut. Fire Ins. Co.*, 150 A.D.3d 1192 (2d Dep't 2017). To demonstrate the facts constituting the cause of action, the plaintiff needs to submit sufficient proof to enable a court to determine if the cause of action is viable. *see Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 71 (2003). The court may consider the complaint, affidavits, and affirmations submitted by the plaintiff. *Id.*

Plaintiff also bears the burden of establishing, *inter alia*, that the defendant was properly served with the motion for default judgment. *see* CPLR 306; CPLR 2103. The plaintiff must also aver that individual defendants are not in active military service.

By decision dated October 4, 2024 ("the Prior Decision"), the Court held that Plaintiffs demonstrated that all defendants are in default in this action. The motion [Mot.

Seq. 1] was denied, however, as Plaintiffs failed to demonstrate service of the motion for default judgment.

On renewal [Mot. Seq.2], Plaintiffs show that defendants were served with this motion and are in default thereon. Plaintiffs also establish the merits of the underlying causes of action. The motion is therefore granted on default.

Accordingly, it is hereby

ORDERED that the motion of Plaintiffs U-HAUL CO. OF NEW YORK AND VERMONT, INC., and U-HAUL CO. OF ARIZONA ("Plaintiffs") [Mot. Seq. 1], for an order pursuant to CPLR § 3215, granting Plaintiffs a default judgment as against defendants SAM CARRASCO, MD AWAL AKA ABDUL AWAL, CYNTHIA A. MORAN, ALBANIA ESTHER POLANCO, and AMERICAN TRANSIT INSURANCE COMPANY ("Defendants") and other relief as set in the motion, is granted on default; and it is further

ORDERED, ADJUDGED, and DECLARED that the Rental Contract issued by Plaintiffs to defendant SAM CARRASCO does not provide coverage for defendant Carrasco's accident on October 12, 2021, or for defendant Carrasco individually; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiffs have no duty to defend or indemnify defendant Carrasco for any claims or lawsuits arising from the October 12, 2021, accident including any claims or judgments obtained or asserted by interested parties AWAL, MORAN and POLANCO as against defendant Carrasco; and it is further

ORDERED that the part of the motion [Mot. Seq 2] that seeks a default judgment on liability finding that defendant Carrasco is personally liable for the property damage to the relevant U-Haul Truck is granted without opposition and said damages shall be determined at inquest; and it is further

ORDERED that the part of the motion that demands attorneys' fees and costs is denied as Plaintiffs fail to set forth any legal basis for said award; and it is further

ORDERED that Plaintiffs shall serve all non-appearing parties with a copy of this decision with notice of entry by **February 28, 2025**, and upload an affidavit of service by **March 10, 2025**; and it is further

ORDERED that Plaintiffs shall file a Note of Issue by **April 1, 2025, and the failure to do so may constitute a waiver of the right to an inquest**; and it is further

ORDERED that Plaintiffs shall, by **April 30, 2025**, upload a letter to NYSCEF requesting the scheduling of an Inquest; and it is further

ORDERED that Plaintiffs shall serve a copy of the Note of Issue and the Letter requesting an Inquest on all non-appearing parties by regular or overnight mail within **15 days** of the filing thereof **AND** upload an affidavit of service **within 5 days** of said service; and it is further

ORDERED that, upon receiving a date for the Inquest, Plaintiffs shall serve non-appearing parties, via overnight **and** regular mail, with a notice of the time and place of the scheduled Inquest; and it is further

ORDERED that an affidavit of service showing the service of the notice of the time and place of the Inquest must be filed within **five days** of the service and **at least 7 days** before the Inquest date; and it is further

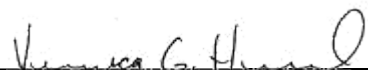
ORDERED that the Clerk shall mark this motion [Mot. Seq. 2] decided in all court records.

The foregoing constitutes the Decision/Order of the court.

Date: January 21, 2025

Bronx, New York

E N T E R,

Hon. 

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

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY	☒ CASE STILL ACTIVE
2. MOTION IS.....	☒ GRANTED	DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE

X NOI by April 1, 2025