

Long Is. Minimally Invasive Surgery, P.C. v Signez

2026 NY Slip Op 31974(U)

May 8, 2026

Supreme Court, New York County

Docket Number: Index No. 157016/2021

Judge: Kathleen Waterman-Marshall

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31M

Justice

-----X

LONG ISLAND MINIMALLY INVASIVE SURGERY, P.C.

Plaintiff,

- v -

DOMINIQUE SIGNEZ,

Defendant.

-----X

INDEX NO. 157016/2021

MOTION DATE 02/12/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, the motion by Long Island Minimally Invasive Surgery (“LIMIS”) for leave to reargue the Court’s January 13, 2026 Decision and Order denying default judgment is granted, without opposition, and upon reargument Long Island is awarded default judgment.

Background

This action arises out of a medical procedure performed by LIMIS for defendant Dominique Signez (“Ms. Signez”). In broad strokes, LIMIS alleges that as an out-of-network provider, pursuant to an Assignment of Insurance Benefits and Right of Recovery Form and Patient Financial Responsibility Form, Ms. Signez agreed to assign her interest in all payments/reimbursements she received from her insurance company to LIMIS and agreed to be responsible for the amount billed to her by LIMIS. It alleges that despite this agreement, Ms. Signez cashed the checks she received from her insurance carrier, instead of providing same to LIMIS, and did not pay for the medical services.

LIMIS served the summons and verified complaint in this action upon Ms. Signez by leaving a copy of same with a person of suitable age and discretion, together with mailing, on August 4, 2021. On June 22, 2022, LIMIS filed an application for a Clerk’s Default Judgment – that application was returned for correction by the Clerk on June 29, 2022 on the basis that the action asserted a claim of conversion which could not be entertained by the Clerk (NYSCEF Doc. No. 5). More than two years after the Clerk returned LIMIS’ default application, LIMIS filed a motion for default judgment on October 22, 2024. By Decision and Order dated January 13, 2026, this Court denied LIMIS’ motion for default judgment, finding that LIMIS failed to demonstrate it took any proceedings to obtain a default judgment during the two-year period following the Clerk’s rejection of its initial default application.

Discussion

I. Reargument & Default Judgment

The purpose of reargument is to provide “a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; see CPLR § 2221[d][2]). “Its purpose is not to serve as a vehicle to permit the

unsuccessful party to argue once again the very questions previously decided” (*id.*). Nor is reargument a proper forum to present arguments different from those originally asserted (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992] *lv. dismissed in part and denied in part* 80 NY2d 1005 [1992]).

LIMIS contends that this Court overlooked that its initial timely Clerk’s default judgment application serves as “tak[ing] proceedings” for the entry of judgment within one year under CPLR § 3215(c) sufficient to avoid dismissal. It argues that the delay between its initial Clerk’s default judgment application and subsequent motion for default judgment “does not matter” (NYSCEF Doc. No. 31 at ¶ 24). Although the Court agrees that LIMIS’ timely Clerk’s default judgment application constitutes taking proceedings for entry of judgment, it does not agree that the delay between the initial unsuccessful Clerk’s default judgment application and LIMIS’ subsequent motion is irrelevant. Nevertheless, the Court grants leave to reargue, and upon reargument grants default judgment for the reasons that follow.

Absent sufficient cause otherwise, the Court shall dismiss a complaint as abandoned if plaintiff “fails to take proceedings for the entry of judgment within one year after the default” (CPLR § 3215(c)). “Tak[ing] proceedings” does not require a plaintiff to “actually obtain a default judgment within one year,” but rather requires proceedings which “manifest an intent not to abandon the case” (*HSBC Bank USA, Nat. Ass’n v Traore*, 139 AD3d 1009, 1010-11 [2d Dept 2016]; *see also Citibank, N.A. v Kerszko*, 203 AD3d 42, 50 [2d Dept 2022]).

The filing of a motion in furtherance of judgment is generally sufficient to avoid dismissal under CPLR § 3215, even where such motion is defective (*Citibank, N.A.*, 203 AD3d 42). There, the Appellate Division, Second Department found that plaintiff took proceedings towards entry of judgment by filing an order to show cause – which the court declined to sign because the supporting affidavit was incomplete – and a five-year delay in next seeking entry of judgment did not warrant dismissal under CPLR § 3215(c) (*id.*).

However, this is not to say that a plaintiff’s timely, but unsuccessful, initial attempt to enter judgment permits the plaintiff to take subsequent proceedings at any time. The Appellate Division, First Department has recently held that a plaintiff’s timely, but unsuccessful, initial attempt at a default judgment does not provide a plaintiff with unlimited time to take subsequent efforts to secure judgment (*Vargas v Mavino Realty Co., Inc.*, 244 AD3d 443 [1st Dept 2025]; *see First Funds, LLC v Bryson*, 2026 WL 564490 [Sup. Ct. NY Cty, February 17, 2026] [Lebovits, J.] [interpreting *Vargas* to impose a reasonable time limitation and finding 14 years between initial and subsequent default judgment motions unreasonable]). In *Vargas*, more than 10 years had elapsed between plaintiff’s timely, but unsuccessful, initial default judgment motion and plaintiff’s subsequent default judgment motion. Despite the timely initial default judgment motion, the First Department dismissed the action under CPLR §3215(c) finding that the plaintiff was required to show “sufficient cause” – i.e. a reasonable excuse and potentially meritorious cause of action (*Municipal Credit Union v Thomas*, 243 AD3d 449 [1st Dept 2025] citing *Citibank, N.A.*, 203 AD3d at 49) – for the extraordinary amount of time between the initial and subsequent default judgment motions (*Vargas v Mavino Realty Co., Inc.*, 244 AD3d 443). Thus, the Court finds that the amount of delay between LIMIS’ initial Clerk’s default judgment application and its subsequent default judgment motion is relevant, contrary to LIMIS’ position on this motion.

LIMIS took efforts to enter judgment within one year of Ms. Signez’ default via a Clerk’s default judgment. Although that application was unsuccessful, it did make subsequent efforts not to abandon the matter (*Citibank, N.A.*, 203 AD3d at 50). The two years that elapsed the Clerk’s rejection of LIMIS’ initial default judgment application and its filing of a subsequent default judgment motion is not so significant as to require LIMIS to show “sufficient cause” why the matter should not be dismissed (*Citibank, N.A.*, 203 AD3d 42 [default judgment permitted without showing of sufficient cause despite five-year delay] *c.f. Vargas*, 244 AD3d 443 [12-year delay required showing of good-cause for entry of

default judgment]). Accordingly, as LIMIS has otherwise demonstrated service of the summons and complaint upon Ms. Signez, the facts underling its claims, and Ms. Signez has failed to appear in this action, default judgment is warranted.

II. Attorney's Fees

Where attorney fees are authorized, either by statute or agreement, the fee sought must be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorney's fees (*American Motorists Ins. Co. v Napco Sec. Sys.*, 244 AD2d 197 [1st Dept 1997]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Fed. Sav. Bank v Off W. Broadway Devs.*, 224 AD2d 376 [1st Dept 1996]).

The Patient Financial Responsibility Form provides that Ms. Signez is responsible for, inter alia, the reasonable attorney's fees incurred by LIMIS should she fail to pay the invoices. Weinstein, Kaplan & Cohen LP's retainer agreement with LIMIS provides for a one-third contingency fee of the amount collected on any settlement or judgment. However, as the actual amount collected on the judgment is not yet ascertainable, the Court cannot provide attorney's fees for one-third of the total judgment amount. Instead, it will award attorney's fees based upon the actual amount of time billed by counsel. Counsel previously provided the actual time spent on this matter, 9.6 hours, as part of its first default judgment motion (NYSCEF Doc. No. 14). The Court finds the total number of hours billed, 9.6 hours, for work through the first default judgment motion reasonable. Similarly, the hourly rates charged by the attorneys (\$375/hr for Ms. Massey; \$475/hr for Mr. Branciforte) and support staff (\$200/hr for Law Clerk Mr. Kemp; \$125/hr for paralegals Ms. Ehrhart and Ms. Landsman) are likewise reasonable given their experience, the results obtained, and the customary fee charged for comparable services. Thus, plaintiff is awarded \$3,450.00 in attorney's fees through the first default judgment motion.¹ The amount of attorney's fees incurred on this motion, based upon the amount of work actually performed, is severed and shall proceed to inquest on paper submissions only.

Accordingly, it is

ORDERED that leave to reargue is granted and upon reargument; it is further

ORDERED, DECLARED and ADJUDGED that plaintiff Long Island Minimally Invasive Surgery shall have judgment and does recover as against defendant Dominique Signez the amount of \$51,465.00, together with costs, disbursements, fees and interest at 12% per annum from September 30, 2020, as calculated and taxed by the Clerk of the Court; and it is further

ORDERED, DECLARED and ADJUDGED that plaintiff Long Island Minimally Invasive Surgery d/b/a New York Bariatric Group shall have judgment and does recover as against defendant

¹ The breakdown of billed work is as follows:
6 hours by Mr. Kemp at \$200/hr = \$1,200.00
0.6 hours by Ms. Ehrhart at \$125/hr = \$75.00
4.6 hours by Ms. Landsman at \$125/hr = \$575.00
2.5 hours by Mr. Branciforte at \$475/hr = \$1,187.50
1.3 hours by Ms. Massey at \$375/hr = \$487.50
Total = \$3,450.00

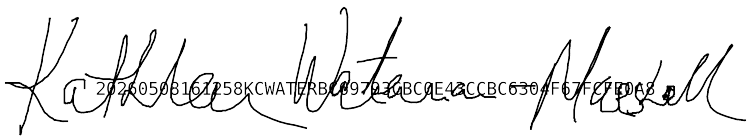
Dominique Signez the amount of \$3,340.00 as reasonable attorney’s fees, together with post-judgment interest at the statutory rate as calculated by the Clerk of the Court; and it is further

ORDERED that judgment shall be submitted to the Clerk of the Court and not to Chambers or the Part, unless directed otherwise by the Clerk of the Court; and it is further

ORDERED that the issue of reasonable attorney’s fees due for work on this motion is severed and shall proceed to **inquest, on paper submissions only, on September 17, 2026**; and it is further

ORDERED that papers in support of reasonable attorney’s fees incurred on this motion shall be filed no later than July 31, 2026; and it is further

ORDERED that papers in opposition of reasonable attorney’s fees incurred on this motion shall be filed to NYSCEF no later than August 31, 2026.



5/8/2026
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE