

SHORT FORM ORDER

SUPREME COURT-STATE OF NEW YORK

PRESENT:

HON. BRUCE D. ALPERT

ENTERED  
IN  
COMPUTER

Justice

TRIAL/IAS, PART 4

Action No. 1

LANCER INSURANCE COMPANY,

Plaintiff,

-against-

Motion Sequence Nos. 5-6

Index No. 7370/04

Motion Date: March 7, 2006

LIMO GOTTA GO CORP., LEONID DVORKIN,  
LUBOV DVORKIN, MARIA KATS, KONSTANTIN  
GLUKHOY, AR MEDICAL ART, P.C.,  
RICHMOND MEDICAL P.C., MILLENNIUM  
SURGICAL SUPPLIES, INC., MARK C.  
YAISER, D.C., ALLSTATE SOCIAL WORK &  
PSYCHOLOGICAL SERVICES, PRESTIGE  
MEDICAL & SURGICAL SUPPLY, INC.,  
PRECISION PHYSICAL THERAPY, P.C.,  
BROMER MEDICAL, P.C., CROSS BAY  
ACUPUNCTURE, P.C., ROBERT VERDE, M.D.,  
and FDNY EMS a/k/a NEW YORK CITY FIRE  
DEPARTMENT,

Defendants.

The following papers read on these motions: 1) for relief under CPLR 3215 & 3212  
2) for relief under CPLR 3212

Notices of Motion	XX
Answering Submission	X
Reply Papers	X

Upon the foregoing papers it is ordered that the application by plaintiff for relief under  
CPLR 3212 and 3215, and the application by defendants, Allstate Social Work &  
Psychological Services and Prestige Medical & Surgical Supply, Inc., for summary judgment

are denied for the reasons hereinafter articulated.

Plaintiff's application consists of two components. The first is directed toward relief under CPLR 3215 and is premised on the assertion that defendants, Leonid Dvorkin, Lubov Dvorkin, Maria Kats, Konstantin Glukhoy and Mark C. Yaiser, D.C., failed to interpose an answer to its complaint.

In addition, the plaintiff seeks summary judgment.

Though not expressly stated, plaintiff presumably seeks summary relief against all the defendants other than those against whom relief has been sought under CPLR 3215, those covered by stipulations of discontinuance (FDNY EMS, AR Medical Art, P.C., Bromer Medical, P.C. and Precision Physical Therapy, P.C.) and Robert Verde, M.D., whose bill appears to have been paid.

The aspect of the plaintiff's motion directed toward relief under CPLR 3215 represents the second attempt to obtain a default judgment against defendants, Leonid Dvorkin, Lubov Dvorkin, Maria Kats, Konstantin Glukhoy and Mark C. Yaiser, D.C. Its initial application was denied by Order of this Court dated November 14, 2005 without prejudice to renewal upon proper papers.

Although the instant application may be more extensive, it suffers from the same deficiency as its predecessor.

Plaintiff's action for declaratory relief turns on whether the occurrence in which defendants, Leonid Dvorkin, Lubov Dvorkin, Maria Kats and Konstantin Glukhoy, allegedly sustained injury was staged.

While the plaintiff has submitted an affidavit from its investigator, Greg Frey, he merely

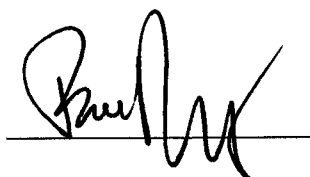
assimilated and articulated the observations of others, and, thus, lacks personal knowledge of the facts. (see, *Blam v Netcher*, 17 AD3d 495; *Choi v JKS Dry Cleaning Equipment Corp.*, 15 AD3d 566)

Plaintiff's prayer for summary judgment is also based in large measure thereon, and, thus, fails to meet the tender requirements associated with summary judgment practice, as it is replete with hearsay declarations. (see, *State Farm Mutual Automobile Insurance Company v Langan*, 18 AD3d 860)

The defendants' summary judgment motion is untimely, as it was made beyond the deadline imposed by the Court in its Certification Memorandum of August 30, 2005. The failure to demonstrate good cause for the delay is preclusive. (see, CPLR 3212 [a]; see also, *Giordano v CSC Holdings, Inc.*, \_\_ AD3d \_\_, 815 NYS2d 471; cf., *Certified Electrical Contracting Corp. v City of New York*, 23 AD3d 596)

Moreover, the Court has not been favored with a copy of the counterclaim asserted by defendant, *Prestige Medical & Surgical Supply, Inc.*, upon which it presumably relies for the relief it seeks.

Dated: July 6, 2006



J.S.C.

**ENTERED**

**JUL 10 2006**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**