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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

**PROGRESSIVE ADVANCED INSURANCE COMPANY and
PROGRESSIVE MAX INSURANCE COMPANY,**

Plaintiff(s),

- against -

**DONNY MOMPOINT, KENNY LOUISSAINT, TAQUIA
ROBINSON, JOSE GOMEZ, MANUEL PERECHU,
GOUBERT BEAUGE, KESHAWN TAYLOR, RASHID BILAL,
CORNELL MEANS, AHMED MUNIR MALIK and NINOTCHKA
LAMONT,**

("Individual Defendants"),

- and -

TRIAL/IAS PART 6

INDEX NO. 18569/10

**MOTION SEQUENCE
NO. 2 & 3**

**MOTION SUBMISSION
DATE: April 15, 2011**

**ABC PHYSICAL THERAPY, P.C., ART OF HEALING MEDICINE
P.C., BAY L'S MEDICAL SUPPLIES, CANON CHIROPRACTIC
CARE, P.C., DARLINGTON MEDICAL DIAGNOSTIC, P.C.,
DOSHI DIAGNOSTIC IMAGING SERVICES, P.C., GABA MEDICAL, P.C.,
GRS CHIROPRACTIC, P.C., KJC CHIROPRACTIC, P.C. LIFE TREE
ACUPUNCTURE, PC., MDJ MEDICAL, P.C., NEW
MILLENNIUM MEDICAL IMAGING, PC., NEW YORK DIAGNOSTIC
MEDICAL CARE, P.C., NOVA ACUPUNCTURE, P.C., OMEGA
DIAGNOSTIC IMAGING, P.C., OPTIMAL WELL-BEING
CHIROPRACTIC, P.C., PARKVIEW MEDICAL & SURGICAL, P.C.,
PRO-VEK PLUS, INC., PROGRESSIVE ORTHOPEDICS, PLLC,
PROGRESSIVE ORTHOPEDICS, PUGSLEY CHIROPRACTIC, PLLC,
ROM MEDICAL P.C., SEACOAST MEDICAL, P.C., STAR MEDICAL
DIAGNOSTIC, PLLC, SUNRISE ACUPUNCTURE, PC., V & T
MEDICAL P.C. and VICTORY REHAB P.T., P.C.,**

("Provider Defendants")

The following papers read on this motion:

Notice of Motion

Notice of Cross Motion

X

X

Affirmation in Opposition

X

Upon the foregoing papers the motion by plaintiffs for an Order pursuant to CPLR §2221(e) for leave to reargue this Court's order issued by the Honorable Roy S. Mahon on February 8, 2011, and upon reargument granting plaintiff's motion for Default Judgment pursuant to CPLR §3125 against defendants: DONNY MOMPOINT, GOUBERT BEAUGE, CORNELL MEANS, AHMED MUNIR MALIK, NINOTCHKA LAMONT, ABC PHYSICAL THERAPY, P.C., ART OF HEALING MEDICINE P.C., BAY L'S MEDICAL SUPPLIES, CANON CHIROPRACTIC CARE, P.C., DARLINGTON MEDICAL DIAGNOSTIC, P.C., DOSHI DIAGNOSTIC IMAGING SERVICES, P.C., GABA MEDICAL, P.C., GRS CHIROPRACTIC, P.C., KJC CHIROPRACTIC, P.C., LIFE TREE ACUPUNCTURE, PC., MDJ MEDICAL, P.C., NEW MILLENNIUM MEDICAL IMAGING, PC., NEW YORK DIAGNOSTIC MEDICAL CARE, P.C., NOVA ACUPUNCTURE, P.C., OPTIMAL WELL-BEING CHIROPRACTIC, P.C., PARKVIEW MEDICAL & SURGICAL, P.C., PRO-VEK PLUS, INC., PUGSLEY CHIROPRACTIC, PLLC, ROM MEDICAL P.C, SEACOAST MEDICAL, P.C., STAR MEDICAL DIAGNOSTIC, PLLC, SUNRISE ACUPUNCTURE, PC., V & T MEDICAL P.C. and VICTORY REHAB P.T., P.C., and the cross motion by the defendants Donny Mompoin, ABC Physical Therapy, PC, Art of Healing Medicine, PC, KJC Chiropractor PC and Nova Acupuncture , PC to answer and deeming their previously served answer served, are both determined as hereinafter provided:

In **Foley v. Roche, 68 AD2d 558, 418 NYS2d 588 (First Dept., 1979)** the Court addressed the issues of reargument and renewal. As to reargument, the Court stated

" . . . A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (*Fosdick v Town of Hempstead*, 126 NY 651; *American Trading Co. v Fish*, 87 Misc 2d 193). Nor does reargument serve to provide a party an opportunity to advance arguments different from those tendered on the original application. It may not be employed as a device for the unsuccessful party to assume a different position inconsistent with that taken on the original motion. As was observed by the Court of Appeals in *Simpson v Loehmann* (21 NY2d 990), 'A motion for reargument is not an appropriate vehicle for raising new questions'. Moreover, were we to consider the present motion as one for reargument, it was clearly untimely, since such a motion may not be made after the time to appeal from the original order has expired (*Matter of Huie [Furman]*, 20 NY2d 568, 572; *Fitzpatrick v Coe*, 58 AD2d 642; *Prude v County of Erie*, 47 AD2d 111). To hold otherwise would permit circumvention of the prohibition against extending the time to take an appeal from the original order (see 2A Weinstein-Korn-Miller, NY Civ Prac, par 2221.03)." **Foley v. Roche, supra at 567-568.**

To the extent that the plaintiffs seek reargument of the Court's February 8, 2011 Order, based upon the plaintiffs' withdrawal of the plaintiffs' requested relief as to the defendants Darlington Medical Diagnostic, PC, Doshi Diagnostic Imaging Services, PC, Kenny Louissant, Ninotchka Lamont, Omega Diagnostic Imaging PC and Progressive Orthopedics, PLLC, said application is **granted**. In all other aspects, the Court's Order remains in full force and effect.

The plaintiffs in the instant action served a verified complaint and in return were entitled to a verified

answer. The defendants Donny Mompont, ABC Physical Therapy, PC, Art of Healing Medicine, PC, KJC Chiropractic PC and Nova Acupuncture PC served an answer which was not verified. The plaintiffs have established that pursuant to the provisions of CPLR §3022 they rejected the answer with due diligence and treated the cross moving defendants' answer as a nullity. While the cross moving defendants seek the requested relief pursuant to CPLR §3012, the defendants proposed answer remains unverified. As such, the defendants Donny Mompont, ABC Physical Therapy, PC, Art of Healing Medicine, PC, KJC Chiropractic PC and Nova Acupuncture PC's application for an Order deeming their previously served answer served, is denied.

SO ORDERED.

DATED:

6/13/2011

.....*Ray S. Mahon*.....
J.S.C.

ENTERED

JUN 1 6 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**