

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 14

PROGRESSIVE PREFERRED INSURANCE CO.,

X

Plaintiff,

Index No.: 012012/11
Motion Sequence...01
Motion Date...03/21/12

-against-

ELLIS NEVERSON, FRANCIS MARTIAL, ALVINUS ESTEPHANE, U-HAUL CO OF ARIZONA, ALESTER HAYWOOD, PATRICK LEFREY, AAMG LEASING CORP, ADVANCED MEDICAL CARE, PC, QUEENS SURGI CENTER, ACTIVE CARE MEDICAL SUPPLY CORPORATION, ALLEN OVEN CHIROPRACTIC CARE, P.C., AVANGUARD MEDICAL GROUP PLLC, FIVE BORO PSYCHOLOGICAL AND LICENSED MASTER SOCIAL WORK SERVICES PLLC, FOREST HILLS MEDICAL P.C., FYZ ACUPUNCTURE, P.C., HARSHAD C. BHATT, PHYSICIAN, P.C., IN LINE CHIROPRACTIC P.C., KINGSBROOK JEWISH MEDICAL CENTER, MEDICALSELECT P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW CENTURY MEDICAL DIAGNOSTICS P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., QUEENS MEDICAL & DIAGNOSTIC SERVICES, P.C., PREMIER SURGICAL SERVICES P.C., PRESTIGE MEDICAL CARE P.C., PUGSLEY MEDICAL P.C., SOPHORA DIAGNOSTIC LABORATORY, LLC, STAR MEDICAL & DIAGNOSTIC MANAGEMENT INC. and XERON CLINICAL LABORATORIES, INC.,

Defendants.

X

Papers Submitted:
Notice of Motion.....x

Upon the foregoing papers, the branch of the Plaintiff's unopposed motion seeking an order pursuant to CPLR § 3215, granting a default judgment in favor of the Plaintiff and against the Defendants, ELLIS NEVERSON, FRANCIS MARTIAL, PATRICK LEFREY, AAMG LEASING CORP, ADVANCED MEDICAL CARE, PC, QUEENS SURGI CENTER, ALLEN OVEN CHIROPRACTIC CARE P.C., AVANGUARD MEDICAL GROUP PLLC, FOREST HILLS MEDICAL P.C., HARSHAD C. BHATT, PHYSICIAN, P.C., IN LINE CHIROPRACTIC P.C., KINGSBROOK JEWISH MEDICAL CENTER, MEDICALSELECT P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW CENTURY MEDICAL DIAGNOSTICS P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., QUEENS MEDICAL & DIAGNOSTIC SERVICES, P.C., PRESTIGE MEDICAL CARE P.C., PUGSLEY MEDICAL P.C., SOPHORA DIAGNOSTIC LABORATORY, LLC, STAR MEDICAL & DIAGNOSTIC MANAGEMENT INC. and XERON CLINICAL LABORATORIES, INC. (collectively referred to as the "Defaulting Defendants"), and the branch of the Plaintiff's motion, seeking an extension of time to effectuate service and for substituted service upon the Defendant, ALVINUS ESTEPHANE, pursuant to CPLR § 306-b and § 308 (5), are decided as hereinafter provided.

This action by the Plaintiff arises out of a series of fraudulent claims for no-fault reimbursement, uninsured motorist ("UIM") benefits and liability coverage,

submitted in connection with a “staged accident”. It is alleged by the Plaintiff in its complaint that it issued a motor vehicle insurance policy under Policy No: 20317570-6 (hereinafter “Policy”) to the Defendant, NEVERSON, covering a 2003 Lincoln. (See Auto Insurance Coverage Summary, dated September 22, 2010, attached to the Plaintiff’s Notice of Motion as Exhibit “E”) The Plaintiff alleges that a motor vehicle accident was intentionally “staged” on December 2, 2010, sixteen (16) days after the policy’s inception causing a “sham loss”. (See Verified Complaint at ¶¶ 40 and 41, dated August 10, 2011, attached to the Plaintiff’s Notice of Motion as Exhibit “A”)

The Plaintiff commenced this action on August 16, 2011, seeking a declaration that the Plaintiff is not obligated to defend, provide any coverage or provide no-fault reimbursements with respect to claims by the Defaulting Defendants in connection with the “staged accident” that occurred on December 2, 2010. The Plaintiff also seeks an inquest on damages as to the Defaulting Defendants.

Submitted in support of the Plaintiff’s motion is the sworn affidavit of Brian Stupar, a Senior Medical Representative of the Plaintiff. Mr. Stupar states in his affidavit that he is familiar with the facts and circumstances of this action and possesses personal knowledge of the facts supporting the Plaintiff’s claims. During an Examination Under Oath, the Defendant, Neverson, stated that he suspected that the 12/2/10 loss was a “set-up” and that fraud may have been involved. (See Affidavit in Support at ¶ 11)

In support of the Plaintiff’s request to effectuate service upon the Defendant, Alvinus Estephane, via publication, Mr. Stupar states that the Plaintiff made

diligent attempts to serve the summons and complaint at the last known address of said Defendant, without success. The Affidavit of Due Diligence submitted in support of the Plaintiff's application states that as per the superintendent of the building, 825 Crown Stree, Brooklyn, New York, Apartment No. D8 (the last known address of Alvinus Estephane) was vacant. (*See* Affidavit of Non-Service, sworn to on September 2, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "K")

The Plaintiff submitted proof of proper service of the Summons and Complaint for all of the Defaulting Defendants. (*See* Affidavits of Service, attached to the Plaintiff's Notice of Motion, collectively as Exhibit "C") Pursuant to CPLR § 3215 (g) (4) (i) and Business Corporation Law § 306 (b), proof of additional service of the summons upon a corporate defendant is required where service was effectuated via the Secretary of State. In this case, the Plaintiff duly submitted proof of additional service of the summons and complaint as to all Defaulting Defendants.

The following Defendants have answered the summons and complaint: U-HAUL CO OF ARIZONA, ACTIVE CARE MEDICAL SUPPLY CORPORATION, FIVE BORO PSYCHOLOGICAL AND LICENSED MASTER SOCIAL WORK SERVICES PLLC and HEALTH NEEDLES ACUPUNCTURE P.C.

The Plaintiff discontinued the action against the Defendants, ALESTER HAYWOOD, FYZ ACUPUNCTURE, P.C. and PREMIER SURGICAL SERVICES P.C. (*See* Stipulations of Discontinuance attached to the Plaintiff's Notice of Motion as Exhibit "D")

The Defaulting Defendants, have not answered or otherwise appeared in this action. The time to answer the summons and complaint has expired. Accordingly, it appearing from the documentation presented that all necessary parties have been served and that the relief requested is appropriate, the branch of the Plaintiff's motion seeking a default judgment against the Defendants, ELLIS NEVERSON, FRANCIS MARTIAL, PATRICK LEFREY, AAMG LEASING CORP, ADVANCED MEDICAL CARE, PC, QUEENS SURGI CENTER, ALLEN OVEN CHIROPRACTIC CARE P.C., AVANGUARD MEDICAL GROUP PLLC, FOREST HILLS MEDICAL P.C., HARSHAD C. BHATT, PHYSICIAN, P.C., IN LINE CHIROPRACTIC P.C., KINGSBROOK JEWISH MEDICAL CENTER, MEDICALSELECT P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW CENTURY MEDICAL DIAGNOSTICS P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., QUEENS MEDICAL & DIAGNOSTIC SERVICES, P.C., PRESTIGE MEDICAL CARE P.C., PUGSLEY MEDICAL P.C., SOPHORA DIAGNOSTIC LABORATORY, LLC, STAR MEDICAL & DIAGNOSTIC MANAGEMENT INC. and XERON CLINICAL LABORATORIES, INC. , is **GRANTED**.

The Court will next address the branch of the Plaintiff's motion seeking an extension of time to effectuate service and for substituted service upon the Defendant, ALVINUS ESTEPHANE. The only evidence proffered by the Plaintiff establishing the efforts made to locate the Defendant prior to requesting court ordered substituted service by publication was an affidavit by a process server. The affidavit establishes that, as per

the superintendent of the building, the apartment where the process server attempted to effectuate service was vacant. The Plaintiff fails to submit any other proof establishing that service upon the Defendant, ALVINUS ESTEPHANE, under CPLR § 308 was impracticable. A plaintiff can demonstrate that service by conventional means is “impracticable” by making diligent, albeit unsuccessful, efforts to obtain information regarding a defendant’s current residence, business address or place of abode. *See Franklin v. Winard*, 189 A.D.2d 717 (1st Dept. 1993). The Court finds that the minimal evidence submitted by the Plaintiff is insufficient to warrant service by publication. Accordingly, the Plaintiff’s request for substituted service by publication is **DENIED**.

However, the Plaintiff’s application for an extension of time to effectuate service upon the Defendant ALVINUS ESTEPHANE, is **GRANTED**. The Plaintiff’s time to serve the summons and complaint is hereby extended up to and including June 4, 2012.

Accordingly, it is hereby

ORDERED, that the Plaintiff’s motion for an order awarding it a default judgment, pursuant to CPLR § 3215, against the Defaulting Defendants, ELLIS NEVERSON, FRANCIS MARTIAL, PATRICK LEFREY, AAMG LEASING CORP, ADVANCED MEDICAL CARE, PC, QUEENS SURGI CENTER, ALLEN OVEN CHIROPRACTIC CARE P.C., AVANGUARD MEDICAL GROUP PLLC, FOREST HILLS MEDICAL P.C., HARSHAD C. BHATT, PHYSICIAN, P.C., IN LINE CHIROPRACTIC P.C., KINGSBROOK JEWISH MEDICAL CENTER,

MEDICALSELECT P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW CENTURY MEDICAL DIAGNOSTICS P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., QUEENS MEDICAL & DIAGNOSTIC SERVICES, P.C., PRESTIGE MEDICAL CARE P.C., PUGSLEY MEDICAL P.C., SOPHORA DIAGNOSTIC LABORATORY, LLC, STAR MEDICAL & DIAGNOSTIC MANAGEMENT INC. and XERON CLINICAL LABORATORIES, INC., is **GRANTED**; and it is further

ORDERED, that the issue of damages shall be addressed at the time of trial against the remaining Defendants; and it is further

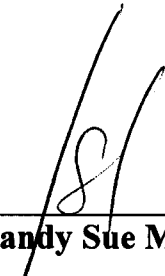
ORDERED, that the branch of the Plaintiff's motion seeking an extension of time to effectuate service of the summons and complaint upon the Defendant, ALVINUS ESTEPHANE, is **GRANTED**, and the Plaintiff's time to serve the summons and complaint upon said Defendant is hereby extended up to and including **June 4, 2012**; and it is further

ORDERED, that Plaintiff's counsel shall serve a copy of this Order upon the Defaulting Defendants, ELLIS EVERSON, FRANCIS MARTIAL, PATRICK LEFREY, AAMG LEASING CORP, ADVANCED MEDICAL CARE, PC, QUEENS SURGI CENTER, ALLEN OVEN CHIROPRACTIC CARE P.C., AVANGUARD MEDICAL GROUP PLLC, FOREST HILLS MEDICAL P.C., HARSHAD C. BHATT, PHYSICIAN, P.C., IN LINE CHIROPRACTIC P.C., KINGSBROOK JEWISH MEDICAL CENTER, MEDICALSELECT P.C., METROPOLITAN MEDICAL & SURGICAL P.C., NEW CENTURY MEDICAL DIAGNOSTICS P.C., NEW

MILLENNIUM MEDICAL IMAGING, P.C., QUEENS MEDICAL & DIAGNOSTIC SERVICES, P.C., PRESTIGE MEDICAL CARE P.C., PUGSLEY MEDICAL P.C., SOPHORA DIAGNOSTIC LABORATORY, LLC, STAR MEDICAL & DIAGNOSTIC MANAGEMENT INC. and XERON CLINICAL LABORATORIES, INC., and all appearing parties, by certified mail, return receipt requested, and by regular mail with proof of mailing within twenty (20) days of the date of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT**; and it is further

ORDERED, that the appearing parties are directed to appear for a Preliminary Conference (*See* 22 NYCRR § 202.12) at the Preliminary Conference Part, located on the lower level of the Nassau County Supreme Court on **June 21, 2012 at 9:30 a.m.** This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require.

DATED: Mineola, New York
May 2, 2012



Hon. Randy Sue Marber, J.S.C.

ENTERED
MAY 07 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE