

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

Luciano v. Felix

2020 NY Slip Op 03878 (N.Y. Ct. App. 2020) · No. 11812NA; 11812N; 11811 · Decided July 9, 2020

SUMMARY

The Appellate Division, First Department affirmed the denial of plaintiff's motion to vacate a default under CPLR 5015, finding that law office failure did not provide a reasonable excuse. The court dismissed appeals from nonappealable orders and stated that, if reached, the serious-injury threshold issue would also favor defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Renwick, J.; Gische, J.; Mazzarelli, J.; Moulton, J.
JURISDICTION	New York
DECIDED	July 9, 2020
DOCKET	11812NA; 11812N; 11811
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed orders denying her motion to vacate a default and restore the action, granting defendants' unopposed motion for summary judgment, and denying leave to renew and reargue.
STANDARD OF REVIEW	Abuse of discretion for denial of relief from a default under CPLR 5015; review of the motion court's exercise of discretion in determining whether a reasonable excuse was shown.
PRECEDENTIAL VALUE	published intermediate appellate opinion
PARTIES	Jennifer Luciano v. Maribel Felix, et al.

TOPICS

default motion for reconsideration summary judgment appellate procedure personal injury

PRACTICE AREAS

civil procedure appellate procedure automobile insurance personal injury

QUESTIONS PRESENTED

1. Whether the appeals from the order granting summary judgment on default and the order denying renewal and reargument were taken from appealable orders.
2. Whether plaintiff established a reasonable excuse for her default sufficient to warrant vacatur under CPLR 5015.
3. Whether the court was required to determine whether plaintiff had a meritorious cause of action when she failed to establish an acceptable excuse for the default.
4. Whether plaintiff's proposed opposition would have raised a triable issue concerning a causally related serious injury under Insurance Law § 5102(d).

HOLDINGS

1. The appeals from the order granting defendants' unopposed motion for summary judgment and the order denying plaintiff's motion for leave to renew and reargue were dismissed because they were taken from nonappealable orders.
2. When summary judgment has been granted on default, the proper remedy is a motion to vacate the default under CPLR 5015, rather than a motion to renew or reargue.
3. Plaintiff failed to establish a reasonable excuse for her default, and law office failure was insufficient under the circumstances.
4. Because plaintiff failed to provide an acceptable excuse for the default, the court was not required to decide whether she demonstrated a meritorious cause of action.

FACTUAL BACKGROUND

Plaintiff failed to submit opposition to defendants' summary-judgment motion, which sought dismissal for lack of a causally related serious injury arising from a minor accident. Plaintiff attributed the failure to law office error, but counsel did not explain why he believed a requested adjournment had been granted, did not seek reargument until three months after dismissal, and did not submit the proposed opposition with the renewal or reargument motion. The proposed opposition also lacked medical evidence causally relating plaintiff's injuries to the accident and did not address degeneration shown in her MRI.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted defendants' unopposed motion for summary judgment dismissing the complaint for failure to establish a causally related serious injury under Insurance Law § 5102(d). The court later denied plaintiff's motion to renew and reargue and denied her motion under CPLR 5015 to vacate the default and restore the matter. The Appellate Division affirmed the CPLR 5015 order and dismissed the appeals from the summary-judgment and renewal/reargument orders as taken from nonappealable orders.

DISPOSITION

affirmed

CASES CITED

- Bank Leumi Trust Co. of N.Y. v. Sibthorpe, 161 A.D.2d 325 (1st Dep't 1990)
- Vasquez v. Koret, Inc., 151 A.D.2d 448 (1st Dep't 1989)
- Perez v. New York City Hous. Auth., 47 A.D.3d 505, 505-506 (1st Dep't 2008)
- Agosto v. Western Beef Retail, Inc., 175 A.D.3d 1192, 1192-1193 (1st Dep't 2019)
- Fernandez v. Santos, 161 A.D.3d 473, 474 (1st Dep't 2018)
- Riollano v. Leavey, 173 A.D.3d 494, 495 (1st Dep't 2019)
- Moreira v. Mahabir, 158 A.D.3d 518, 518 (1st Dep't 2018)
- Rodriguez v. Konate, 161 A.D.3d 565, 566 (1st Dep't 2018)
- Alvarez v. NYLL Mgt. Ltd., 120 A.D.3d 1043, 1044 (1st Dep't 2014), aff'd, 24 N.Y.3d 1191 (2015)
- Williams v. Laura Livery Corp., 176 A.D.3d 557, 558 (1st Dep't 2019)

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