

1A PART 13

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: Part 13

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SELECTIVE AUTO INSURANCE

Index No. 0020889/2014

-against-

Hon. FERNANDO TAPIA,

NESBITT, KATHLEEN

Justice Supreme Court

*Ab CPLR 3215(c)*

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, DISMISSAL motion  
Noticed on March 06 2017 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing ~~papers~~ this

*PLEASE SEE ATTACHED DECISION.*

Motion is Respectfully Referred to:  
Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 9/6/17

Hon.   
FERNANDO TAPIA, J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY: Part 13**

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**SELECTIVE AUTO INSURANCE CO. OF NEW JERSEY  
a/s/o ALAN PINE**

**Plaintiff,**

**v.**

**Index No. 20889-14E**

**KATHLEEN NESBITT and KHADIJA S. DAVIS,**

**Defendants.**

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**DECISION**

This action involves a CPLR 3215(c) dismissal action of a three-car rear-end motor vehicle accident [MVA] that occurred on 22 July 2011, in which Plaintiff/Subrogee/Mr. Alan Pine sustained injuries as driver of his 2010 Mercury [which was the middle car in the chain].

Defendants, through counsel, move for a CPLR 3215(c) dismissal on the basis that Plaintiff failed to secure a default judgment. Plaintiff, through counsel, cross-moves for leave to hold inquest and entry of a default judgment against Defendants on the basis that Defendants failed to interpose its Answer to the Verified Complaint.

After careful review of the motion and cross-motion papers, this Court decides the following:

- Defendants' motion is **DENIED**;
- Plaintiff's cross-motion is **GRANTED**

Under CPLR 3215(c) ["Default not entered within one year"], if the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, unless sufficient cause is shown why the complaint should not be dismissed.

Here, Plaintiff did not file a default judgment motion. See Holmes Aff. at p. 2. In addition, more than one year has passed since both Defendants should have interposed their Answer to the Verified Complaint. In turn, Plaintiff, through counsel, contends that the rear-end MVA is enough of a meritorious

defense and that ongoing settlement talks constitute a reasonable excuse. See Ambrose Aff. at ¶¶ 9, 11.

Ongoing settlement talks can occur even if a CPLR 3215 default judgment motion is filed, especially when the parties are making good-faith efforts to reach a settlement.

In sum, Defendant's motion to dismiss under CPLR 3215(c) is **DENIED** and Cross-Movant's motion is **GRANTED**. Cross-movant's attorney is **ORDERED** to file Note Of Issue forthwith so that the matter can be set on the Inquest Part 19 Calendar. Movant's attorney is **DIRECTED** to file Notice of Entry within fourteen [14] business days from the date this Decision is entered.

This constitutes the Decision and Order of this Court.

Dated: September 6, 2017  
Bronx, NY



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Hon. Fernando Tapia, J.S.C.