

PV Holding Corp. v Needlepoint Acupuncture, P.C.
2021 NY Slip Op 30466(U)
February 18, 2021
Supreme Court, New York County
Docket Number: 162473/2019
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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INDEX NO. 162473/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

PV HOLDING CORP. INCLUDING ALL OF ITS
SUBSIDIARIES AND AFFILIATES, INCLUDING BUT NOT
LIMITED TO AVIS BUDGET, LLC, AVIS CAR RENTAL,
LLC, BUDGET CAR RENTAL, LLC, BUDGET TRUCK
RENTAL, LLC, PAYLESS CAR RENTAL, INC. AND
ZIPCAR, INC.,

Plaintiff,

- v -

NEEDLEPOINT ACUPUNCTURE, P.C., NEIGHBORHOOD
MEDICAL HEALTH CARE, P.C., RIVERSIDE PARK
ACUPUNCTURE, P.C., FOSTER MEDICAL,
P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON
ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU
REFERENCE MEDICAL LAB LIMITED LIABILITY
COMPANY, NYRX PHARMACY, INC., WESTCHESTER
RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY
MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL
SUPPLIES, L.L.C., ST. BARNABAS HOSPITAL, NEW
YORK CITY HEALTH & HOSPITAL, RICHARD GARCIA
MERCADO, YVELISSE BENITEZ HERNANDEZ, VIANNEY
BENITEZ HERNANDEZ

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31,
32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 53, 54, 55, 56, 57

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion for default is granted in part, namely as to the
following defendants: FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING
CORP., ARON ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE
MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC.,
WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY
MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C. and

RICHARD GARCIA MERCADO, without opposition¹. Defendants, NEIGHBORHOOD MEDICAL HEALTH CARE, P.C., NEEDLE POINT ACUPUNCTURE, P.C., and RIVERSIDE PARK ACUPUNCTURE PC, cross-moved to compel acceptance of untimely filed answer.

Default judgment for the untimely initial appearance or filing in a matter is appropriate on the basis of prejudice to the plaintiffs. However, as in this instance, when no risk of prejudice exists because of the length of delay and none is in fact shown, public policy strongly favors the meritorious resolution of cases. Thus, the motion for default as to defendants NEIGHBORHOOD MEDICAL HEALTH CARE, P.C., NEEDLE POINT ACUPUNCTURE, P.C., and RIVERSIDE PARK ACUPUNCTURE PC, is denied and the cross-motion granted.

In support of the motion, plaintiff annexes proof of service of the summons and verified complaint, the plaintiff's affidavit of merit and military search.

Plaintiff commenced this action for a judgment declaring that it owes no duty to pay any No-Fault benefits arising out of an alleged motor vehicle accident which occurred on June 18, 2019.

An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. *Zelnick v Biderman Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422 [2d Dept 1996].

Plaintiff has demonstrated that on January 10, 2020 the summons and verified complaint was duly served upon, RICHARD GARCIA MERCADO, and on January 17, 2020 FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON ROVNER MD,

¹ Since the filing of the motion, the motion has been withdrawn as to defendants Yvelisse Benitez Hernandez and Vianney Benitez Hernandez, and all claims discontinued as to St. Barnabas Hospital. See NYSCEF Docs. 41 and 43.

P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC., WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY MEDICAL CARE, P.C., and QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C. were duly served. To date, FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC., WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C., and RICHARD GARCIA MERCADO have failed to answer, appear, or obtain an order from the court extending its time to do so, and the time to answer or otherwise appear has expired.

Pursuant to CPLR 3215, plaintiff has demonstrated that FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC., WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C., and RICHARD GARCIA MERCADO were properly served with the summons and complaint, that FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC., WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C., and RICHARD GARCIA

MERCADO, failed to answer or appear in this action, that the time to do so has long since passed, and that American Transit's claims are meritorious.

Accordingly, it is hereby

ADJUDGED and DECLARED that plaintiff is entitled to declaratory judgment that there is no no-fault coverage for benefits claimed by defendants FOSTER MEDICAL, P.C., AMERICAN DIAGNOSTIC IMAGING CORP., ARON ROVNER MD, P.L.L.C., SBH PHYSICIANS, P.C., ACCU REFERENCE MEDICAL LAB LIMITED LIABILITY COMPANY, NYRX PHARMACY, INC., WESTCHESTER RADIOLOGY & IMAGING, P.C., QUALITY HEALTH FAMILY MEDICAL CARE, P.C., QUALITY MEDICAL & SURGICAL SUPPLIES, L.L.C. and RICHARD GARCIA MERCADO, for the motor vehicle accident that occurred on June 18, 2019; and it is further

ORDERED that the balance of the action is severed and continued.

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2/18/2021

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE