

**Davidoff Law Firm, PLLC v Ellwood City Med. Ctr.,
LLC**

2019 NY Slip Op 32249(U)

July 25, 2019

Supreme Court, New York County

Docket Number: 650376/2019

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

INDEX NO. 650376/2019

DAVIDOFF LAW FIRM, PLLC and JONATHAN DAVIDOFF,

MOTION DATE 02/15/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE,
AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER,
LLC, IZARD COUNTY MEDICAL CENTER, LLC D/B/A
COMMUNITY MEDICAL CENTER CLINIC OF CALICO ROCK
D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND
D/B/A COMMUNITY MEDICAL CENTER CLINIC OF
MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE
HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY
HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY
PCH D/B/A TOTAL CARE RURAL CLINIC and ELLWOOD CITY
HOSPITAL,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9

were read on this motion for SUMMARY JUDGMENT (BEFORE JOIND)

Upon the foregoing documents, it is

ORDERED that the Order of July 10, 2019 resolving motion
sequence 001 in this proceeding is VACATED, RESETTLED AND CORRECTED
AS PURSUANT TO CPLR 5019 [see Kiker v Nassau County, 85 NY2d 879
(1995)].

In this action seeking damages for breach of a settlement
agreement, plaintiffs DAVIDOFF LAW FIRM, PLLC and JONATHAN DAVIDOFF
moves for summary judgment in lieu of complaint under CPLR 3213
against defendants ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE,
AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER, LLC, IZARD COUNTY
MEDICAL CENTER, LLC D/B/A COMMUNITY MEDICAL CENTER CLINIC OF CALICO

ROCK D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND D/B/A COMMUNITY MEDICAL CENTER CLINIC OF MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY PCH D/B/A TOTAL CARE RURAL CLINIC and ELLWOOD CITY HOSPITAL. Plaintiffs submit a copy of the settlement agreement signed by the defendants in addition to an affidavit as to the terms thereof and defendants' failure to pay thereupon. Plaintiffs submit proof of service of this application upon the defendant.

The court determines that this action "is based upon an instrument for the payment of money only" pursuant to CPLR 3213 and that the other requirements of the statute have been met. Therefore, plaintiffs' motion shall be granted on default as defendants have not appeared or submitted papers on the motion.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for a default judgment against defendants ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE, AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER, LLC, IZARD COUNTY MEDICAL CENTER, LLC D/B/A COMMUNITY MEDICAL CENTER CLINIC OF CALICO ROCK D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND D/B/A COMMUNITY MEDICAL CENTER CLINIC OF MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY PCH D/B/A TOTAL CARE RURAL CLINIC and ELLWOOD CITY HOSPITAL is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of the plaintiffs DAVIDOFF LAW FIRM, PLLC and JONATHAN DAVIDOFF and against defendants ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE, AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER, LLC, IZARD COUNTY MEDICAL CENTER, LLC D/B/A COMMUNITY MEDICAL CENTER CLINIC OF CALICO ROCK D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND D/B/A COMMUNITY MEDICAL CENTER CLINIC OF MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY PCH D/B/A TOTAL CARE RURAL CLINIC and ELLWOOD CITY HOSPITAL in the principal sum of \$90,000.00, with interest of \$ _____ at the contractual rate of 12% per annum as prayed for from the date of January 15, 2019 until the date of entry of judgment, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk of \$ _____, for a total of \$ _____ ; and it is further

ORDERED that the issue of attorney's fees to be assessed against defendants ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE, AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER, LLC, IZARD COUNTY MEDICAL CENTER, LLC D/B/A COMMUNITY MEDICAL CENTER CLINIC OF CALICO ROCK D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND D/B/A COMMUNITY MEDICAL CENTER CLINIC OF MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY PCH D/B/A TOTAL CARE RURAL

CLINIC and ELLWOOD CITY HOSPITAL is referred for determination pursuant CPLR 3215 (b) to a Special Referee and that within 60 days from the date of this Order the plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) to arrange a date for a reference to determine pursuant to CPLR 4317 (b); and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3215 (b) the Clerk is directed to enter judgment in favor of plaintiffs DAVIDOFF LAW FIRM, PLLC and JONATHAN DAVIDOFF and against defendants ELLWOOD CITY MEDICAL CENTER, LLC, GRANT WHITE, AMERICORE HEALTH, LLC, PINEVILLE MEDICAL CENTER, LLC, IZARD COUNTY MEDICAL CENTER, LLC D/B/A COMMUNITY MEDICAL CENTER CLINIC OF CALICO ROCK D/B/A COMMUNITY MEDICAL CENTER OF HORSESHOE BEND D/B/A COMMUNITY MEDICAL CENTER CLINIC OF MELBOURNE, AH OF IZARD COUNTY, LLC, AMERICORE HEALTH ENTERPRISES, LLC, PINEVILLE COMMUNITY HOSPITAL ASSOCIATION, LLC D/B/A TOTAL CARE PHARMACY PCH D/B/A TOTAL CARE RURAL CLINIC and ELLWOOD CITY HOSPITAL in accordance with the report of the aforementioned Special Referee without any further application.

JUL 25 2019
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

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| <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED | <input type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | |
| <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input checked="" type="checkbox"/> | REFERENCE |