

<b>PV Holding Corp. v Aries Chiropractic, P.C.</b>
2022 NY Slip Op 30346(U)
February 8, 2022
Supreme Court, New York County
Docket Number: Index No. 153100/2021
Judge: Richard G. Latin
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN PART 46V

Justice

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INDEX NO. 153100/2021

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.,

MOTION DATE 02/7/2022

MOTION SEQ. NO. 001

Plaintiff,

- v -

ARIES CHIROPRACTIC, P.C., BEDFORD MEDICAL SERVICES P.C., ESM REHAB PT P.C., GALLERY CHIROPRACTIC, P.C., HIGHLAWN ORTHOMED INC., MEDAID RADIOLOGY, LLC, NEW TIMES ACUPUNCTURE, P.C., ARTHUR EDWARDS, MARK JEAN, DION LEWIS

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that the motion by plaintiff 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. ("Avis") pursuant to CPLR 3215 and CPLR 3025 is determined as follows:

Plaintiff commenced this action seeking a declaration that Avis has no obligation to provide No-Fault coverage for the claims of the defendants related to an alleged accident that supposedly occurred on August 6, 2020, which was given Avis claim number 208031177. With this unopposed motion, plaintiff seeks default judgment against all of the defaulting defendants and for leave to serve an amended summons and amended verified complaint.

When a defendant fails to appear or answer, the plaintiff may seek a default judgment from that party (CPLR 3215[a]). In order to obtain a default judgment pursuant to CPLR 3215 a movant must provide proof of service of the summons and complaint and proof of the facts constituting the claim (CPLR 3215[f]; see *Gantt v North Shore-LIJ Health System*, 140 AD3d 418 [1st Dept 2016]). Here, plaintiff Avis satisfied its burden with the requisite proof with respect to defendants Bedford Medical Services P.C., ESM Rehab PT P.C., Highlawn Orthomed Inc., MedAid Radiology, LLC, Arthur Edwards, Mark Jean, and Dion Lewis.

As to the second branch of the motion, “[l]eave to amend pleadings under CPLR 3025(b) should be freely given, and denied only if there is ‘prejudice or surprise resulting directly from the delay,’ or if the proposed amendment ‘is palpably improper or insufficient as a matter of law’” (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012][internal citations omitted]). Here, the proposed amendment is not palpably insufficient or devoid of merit, nor at this stage in the litigation is there any prejudice in allowing the plaintiff to amend its pleadings to add Nexray Medical Imaging, P.C., Opeulowa Eleyifane, M.D. a/k/a Opeulowa Eleyinafe, M.D., Ridgewood Diagnostic Laboratory, LLC, Thoden Chiropractic, P.C., and Whiplash Chiropractic, P.C., as additional medical provider defendants who have submitted bills for No-Fault reimbursement related to the subject claim.

Accordingly, it is hereby

ORDERED that the motion is granted and the plaintiff is entitled to a default judgment against Bedford Medical Services P.C., ESM Rehab PT P.C., Highlawn Orthomed Inc., MedAid Radiology, LLC, Arthur Edwards, Mark Jean, and Dion Lewis, declaring that Avis has no obligation to provide No-Fault coverage for the subject claim; and it is further

ORDERED that the amended summons and amended verified complaint, in the for annexed to the moving papers under NYSCEF doc. #30, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in this action; and it is further

ORDERED that the amended summons and amended verified complaint, in the for annexed to the moving papers under NYSCEF doc. #30, shall be served in accordance with the Civil Practice Law and Rules, upon Nexray Medical Imaging, P.C., Opeulowa Eleyifane, M.D. a/k/a Opeulowa Eleyinafe, M.D., Ridgewood Diagnostic Laboratory, LLC, Thoden Chiropractic, P.C., and Whiplash Chiropractic, P.C. within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

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,

-against-


ARIES CHIROPRACTIC, P.C., BEDFORD  
MEDICAL SERVICES P.C., ESM REHAB PT P.C.,  
GALLERY CHIROPRACTIC, P.C., HIGHLAWN  
ORTHOMED INC, MEDAID RADIOLOGY, LLC,  
NEW TIMES ACUPUNCTURE, P.C., NEXRAY  
MEDICAL IMAGING, P.C., OPEULOWA  
ELEYIFANE, M.D. a/k/a OPEULOWA ELIYINAFE,  
M.D., RIDGEWOOD DIAGNOSTIC LABORATORY,  
LLC, THODEN CHIROPRACTIC, P.C., WHIPLASH  
CHIROPRACTIC, P.C., DION LEWIS, ARTHUR  
EDWARDS and MARK JEAN,

Defendants.

And it is further ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address ([www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh))).

This constitutes the decision and order of the Court.

<u>2/8/2022</u> DATE	 Richard G. Latin, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE