

**PV Holding Corp. v Big Apple Med Equip., Inc.**

2022 NY Slip Op 30693(U)

March 3, 2022

Supreme Court, New York County

Docket Number: Index No. 159236/2019

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

-----X

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.,

INDEX NO. 159236/2019

MOTION DATE 02/22/2022

MOTION SEQ. NO. 003

Plaintiff,

- v -

BIG APPLE MED EQUIPMENT, INC., CITYWORKS  
PHYSICAL THERAPY, P.C., DYNAMIC MEDICAL IMAGING,  
P.C., KINGS CHIROPRACTIC WELLNESS, P.C., JA  
PHYSICAL THERAPY, P.C., LK ACUPUNCTURE,  
P.C., METRO PAIN SPECIALISTS, P.C., NORTHERN  
MEDICAL CARE, P.C., UNION DME CORP., VAN LOON  
DME USA, INC., MACCABI PHARMACY RX, INC., MS ST.  
LUKES & ROOSEVELT, WELLNESS PHYSICAL THERAPY  
REHABILITATION PLLC, STEVEN S. WEINSTEIN, M.D.,  
P.C., ARTHRITIS & PAIN, R.C., JOSEPH WEINSTEIN DO,  
P.C., SMS THERAPY SUPPLY, INC., DAVID FULTON, AJA  
SIMON, DONNA SERRANO, ROBERT THOMPSON,  
ALEXIOS APAZIDIS, M.D., P.C., NEW YORK SURGERY  
CENTER QUEENS, LLC, MK DME, INC., ADVANCED  
RECOVERY SOLUTION, INC., NEXTSTEP HEALING,  
INC., ALL CITY FAMILY HEALTHCARE CENTER, INC., DNA  
PHARMACY, INC., PROTECHMED, INC.,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 99, 100, 101, 102,  
103, 104, 105, 106, 107, 108, 109, 110, 111

were read on this motion to/for JUDGMENT - DEFAULT

**BACKGROUND**

This action arises from a motor vehicle accident that occurred on April 20, 2019. Robert  
Thompson was operating an automobile leased from plaintiff. Plaintiff is self-insured. The  
vehicle was involved in an accident with a taxicab on Ninth Avenue and West 52<sup>nd</sup> Street, New

York, New York. Aja Simon, David Fulton and Donna Serrano were passengers in Thompson’s vehicle.

On May 26, 2020, plaintiff was awarded a default judgment as to Cityworks Physical Therapy, PC, Dynamic Medical Imaging, PC, Kings Chiropractic Wellness, PC, JA Physical Therapy, PC, LK Acupuncturist, PC, Northern Medical Care, PC, Van Loom DME USA, Inc., Maccabi Pharmacy Rx Inc., MS St Lukes & Roosevelt, Wellness Physical Therapy Rehabilitation PLLC, Steven S. Weinstein. MD., PC, Arthritis & Pain, RC., Josph Weinstein DO PC, and SMS Therapy Supply Inc.

On May 3, 2021, the court granted plaintiff’s motion to amend the complaint to include Alexios Apazidis, MD, PC, New York Surgery Center of Queens, MK DME, Inc., Advanced Recovery Solution, Inc., Nextstep Healing, Inc., All City Family Healthcare Center, Inc., and DNA Pharmacy.

On May 11, 2021, Alexios Apazidis MD and New York Surgery Center of Queens filed an answer. On May 28, 2021, All City Family Healthcare Center Inc. filed an answer.

**PENDING MOTION**

On February 22, 2022, plaintiff moved, pursuant to CPLR §3215 for a default judgment as against MK DME, Inc, Advanced Recovery Solution, Inc., Nextstep Healing, Inc. and DNA Pharmacy, Inc, (collectively “Additional Defendants”). The additional defendants have failed to appear or submit opposition.

**DISCUSSION**

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit

proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing." *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

Plaintiff submits an affidavit of service (NYSCEF Doc No. 102) showing the amended summons and complain was served on the additional defendants by uploading a digital copy of the same to NYSCEF and by regular mail to each of the additional defendants. This service is not in accordance with the CPLR. Plaintiff is unable to establish proper service on the additional defendants, therefore the motion is denied.

### CONCLUSION

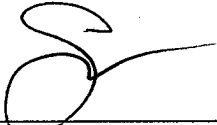
Wherefore, it is hereby

ORDERED plaintiff's motion for a default judgment as against MK DME, Inc, Advanced Recovery Solution, Inc., Nextstep Healing, Inc. and DNA Pharmacy, Inc, is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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)); and it is further

This constitutes the decision and order of the court.

<u>3/3/2022</u> DATE	 SABRINA KRAUS, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" 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
				OTHER
				REFERENCE