

PV Holding Corp v Affinity RX, Inc.

2023 NY Slip Op 34051(U)

November 15, 2023

Supreme Court, New York County

Docket Number: Index No. 152004/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12
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. 152004/2021
MOTION DATE N/A
MOTION SEQ. NO. 003

Plaintiff,

- v -

AFFINITY RX, INC., ALL NATIONS DME CORP., ALL
WELLNESS ACUPUNCTURE, P.C., APEXX SUPPLY, INC.,
ARIES CHIROPRACTIC, P.C., ASC OF ROCKAWAY
BEACH, CITYWORKS PHYSICAL THERAPY, P.C.,
CONTEMPORARY ORTHOPEDICS, PLLC, CORRECT
ALIGN CHIROPRACTIC, P.C., CPM MED SUPPLY, INC.,
FIFTH AVENUE SURGERY CENTER, LLC, GO FLEX
REHAB PHYSICAL THERAPY, P.C., GOOD SPACE
ACUPUNCTURE, P.C., HP MEDICAL CARE, P.C., JEVA
PHYSICAL THERAPY, P.C., JPB CHIROPRACTIC, P.C.,
LENCO DIAGNOSTIC LABORATORIES, INC., LIMA
SUPPLY, INC., LINDEN WEST MEDICAL, P.C., MAJESTIC
MEDICAL IMAGING, P.C., METRO PAIN SPECIALISTS
PROFESSIONAL CORPORATION, MPO MS., INC.,
NOSTRAND DRUGS RX, INC., PREMIER ANESTHESIA
ASSOCIATES, PA, QUALITY CARE RX, INC., QUALITY
MED EQUIP, INC., QUICK HEALTH PHARMACY CORP.,
TAMESHA THOMPSON, DOMINIQUE WASHINGTON and
JERROL DAWSON,

**DECISION + ORDER ON
MOTION**

Defendants.

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

were read on this motion to/for AMEND CAPTION/PLEADINGS

In this declaratory judgment action, 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.

152004/2021 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.
vs. AFFINITY RX, INC. ET AL
Motion No. 003

moves, pursuant to CPLR 3025, for leave to serve an amended summons and an amended verified complaint to add Total Anesthesia Provider, P.C. as a defendant. The motion is not opposed.

Is well settled that “leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [citation omitted]). “[A] party opposing leave to amend ‘must overcome a heavy presumption of validity in favor of [permitting amendment]’” (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012] [citation omitted]), by demonstrating prejudice or surprise or that the proposed amendment is palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]).

Here, plaintiff has demonstrated the merit to the proposed amendment. Plaintiff relies on an affidavit from John Kovacik (Kovacik), a litigation consultant employed by non-party Sedgewick Claims Management Services, the entity handling New York no-fault claims for Avis Budget, LLC (Avis) (NYSCEF Doc No. 110, Bouvher affirmation, exhibit I, Kovacik aff, ¶¶ 1-2). Kovacik avers that after this action was commenced, Avis received bills from Total Anesthesia Provider, P.C. submitted on behalf of defendants Tamesha Thompson, Dominique Washington and Jerrol Dawson related to the subject motor vehicle accident that occurred on July 13, 2020 (*id.*, ¶ 19).

Accordingly, it is

ORDERED that the motion brought 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., for

leave to serve an amended summons and amended verified complaint (motion sequence no. 003) is granted, without opposition; and it is further

ORDERED that the amended summons and amended verified complaint, in the form annexed to the motion papers as exhibit H (NYSCEF Doc No. 109), shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party, Total Anesthesia Provider, P.C., in this action 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.,

Index No. 152004/2021

Plaintiff,

- against -

AFFINITY RX, INC., ALL NATIONS DME CORP., ALL WELLNESS ACUPUNCTURE, P.C., APEXX SUPPLY, INC., ARIES CHIROPRACTIC, P.C., ASC OF ROCKAWAY BEACH, CITYWORKS PHYSICAL THERAPY, P.C., CONTEMPORARY ORTHOPEDICS, PLLC, CORRECT ALIGN CHIROPRACTIC, P.C., CPM MED SUPPLY, INC., FIFTH AVENUE SURGERY CENTER, LLC, GO FLEX REHAB PHYSICAL THERAPY, P.C., GOOD SPACE ACUPUNCTURE, P.C., HP MEDICAL CARE, P.C., JEVA PHYSICAL THERAPY, P.C., JPB CHIROPRACTIC, P.C., LENCO DIAGNOSTIC LABORATORIES, INC., LIMA SUPPLY, INC., LINDEN WEST MEDICAL, P.C., MAJESTIC MEDICAL IMAGING, P.C., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, MPO MS., INC., NOSTRAND DRUGS RX, INC., PREMIER ANESTHESIA ASSOCIATES, PA, QUALITY CARE RX, INC., QUALITY MED EQUIP, INC., QUICK HEALTH PHARMACY CORP., TOTAL ANESTHESIA PROVIDER, P.C., TAMESHA THOMPSON, DOMINIQUE WASHINGTON and JERROL DAWSON,

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 and the Clerk of the General Clerk’s Office, 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).

The foregoing constitutes the decision and order of the Court.

11/15/2023
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: