

Ideyi v Omnicare Anesthesia, PC

2025 NY Slip Op 31913(U)

May 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 515612/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 515612/2022
Motion Date: 5-20-2025
Mot. Seq. No.:4

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DR. STEVE IDEYI and CORE HEALTH MEDICAL
CARE, PLLC,

Plaintiffs,

-against-

DECISION/ORDER

OMNICARE ANESTHESIA, PC, OMNICARE
MULTISPECIALTY, LLC, EVAN SCREVECOUR,
MD, DR. NIRAV PATEL, DO, d/b/a PREMIER
VASCULAR,

Defendants.
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The following papers, which are e-filed with NYCEF as Document Numbers 46-55, were read on this motion:

The defendants, OMNICARE ANESTHESIA, PC, OMNICARE MULTISPECIALTY, LLC, and EVAN SCREVECOUR, move for an Order vacating this Court’s Order dated March 8, 2024, which granted plaintiffs’ motion for a Default Judgment against the defendants.

The summons and complaint in this action were served on the moving defendants on June 3, 2022. The moving defendants do not dispute this. On December 12, 2022, more than six months later, the plaintiff filed and served a motion for a default judgment against all defendants due to their failure to interpose an answer the complaint. On March 7, 2022, approximately three months later, the moving defendants cross-moved for an Order granting them leave to serve a late answer. The motion and cross-motion were scheduled for oral augment on March 18, 2024. When the moving defendants failed to appear, the Court issued an Order granting plaintiffs’ motion on default. The moving defendants’ motion for leave to serve a late answer was marked off.

“In order to vacate a default in opposing a motion, pursuant to CPLR 5015(a)(1), the moving party is required to demonstrate a reasonable excuse for his or her default and a

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potentially meritorious opposition to the motion” (*New Century Mtge. Corp. v. Chimmiri*, 146 A.D.3d 893, 894, 45 N.Y.S.3d 209 [internal quotation marks omitted]; see *Aurora Loan Servs., LLC v. Ahmed*, 122 A.D.3d 557, 557, 996 N.Y.S.2d 92). Assuming, arguendo, that the moving defendants adequately demonstrated a reasonable excuse for their default in failing to appear on March 18, 2024, as well as meritorious defense to the action, they have not demonstrated a meritorious opposition to plaintiff’s motion for a default judgment or that their motion for leave to submit a later answer has merit.

“In order to avoid the entry of a default judgment, a defendant who has failed to appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense to the action” (*Jong Gwon Kim v. Strippoli*, 144 A.D.3d 982, 983, 42 N.Y.S.3d 245). A defendant who moves pursuant to CPLR 3012(d) to compel the plaintiff to accept late service of an answer is required to make a similar showing (*see id.* at 983, 42 N.Y.S.3d 245). CPLR 3012(d) expressly provides that “[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.”

In opposition to plaintiffs’ motion for a default judgment and in support of their cross-motion to submit a late answer, the moving defendants submitted an affirmation of their attorney, as well as the affidavit of Evans Crevecoeur, MD. Defendants’ attorney stated in his affirmation that “Dr. Evans Crevecoeur, a named defendant, and the President/CEO of the other Omnicare developed health challenges which made it difficult for him to effectively respond to the Complaint.” He did not describe the nature of Dr. Crevecoeur’s health challenges, nor did he describe in any detail how they prevented him from taking any action to answer the complaint for the approximate six-month period the moving defendants were in default.

In his affidavit dated March 6, 2023, Dr. Crevecoeur stated, as follows:

4. The OmniCare defendants have delayed in filing an Answer to the Plaintiffs complaint because shortly after the receipt of the Summons and Complaint by the OmniCare Defendants, deponent has been having health challenges that have made it difficult for him to effectively combine his work as a Medical Doctor and the CEO of the OmniCare defendants.

5. Your deponent has not fully recovered from ill health and is scheduled for both heart and orthopedic surgeries on March 9, 2023.

6. The deponent is personally seized of the facts and circumstances of this case and could not delegate the duty of responding to any other person.

Dr. Crevecoeur did not describe the nature of his orthopedic or heart problems, when they began, nor how these problems prevented him taking steps to hire counsel to submit an answer on his and the other moving defendants' behalf. Significantly, the moving defendants failed to submit any medical evidence supporting Dr. Crevecoeur's claim that his health issues prevented the moving defendants from timely answering the complaint.

The determination of whether a reasonable excuse has been established is a matter addressed to the broad discretion of the trial court based upon the circumstances of the particular case (*see Yuxi Li v. Caruso*, 161 A.D.3d 1132, 1133–1134, 77 N.Y.S.3d 685; *Matter of Haberman v. Zoning Bd. of Appeals of the City of Long Beach*, 152 A.D.3d 683, 684, 58 N.Y.S.3d 585; *Duprat v. BMW Fin. Servs., NA, LLC*, 142 A.D.3d 946, 947, 38 N.Y.S.3d 32; *Gershman v. Ahmad*, 131 A.D.3d 1104, 1105, 16 N.Y.S.3d 836). “[M]ere neglect is not a reasonable excuse” (*Hudson City Sav. Bank v. Augustin*, 191 A.D.3d at 775, 142 N.Y.S.3d 89 [internal quotation marks omitted]).

Here, the vague, conclusory and unsubstantiated assertions that Dr. Crevecoeur's health issue prevented the moving defendants from timely appearing in the action failed to establish a reasonable excuse for their default (*U.S. Bank N.A. v. Barr*, 139 A.D.3d 937, 937–938, 30 N.Y.S.3d 576; *Kamil El-Deiry & Assocs. CPA, PLLC v. Excellent Home Care Servs., LLC*, 208 A.D.3d 1170, 1171, 175 N.Y.S.3d 79, 81). Thus, the moving defendants failed to establish a reasonable excuse for their default in answering, they did not demonstrate their entitlement to the relief requested. For these reasons, the Court need not reach the issue of whether the moving defendants presented a potentially meritorious defense on the underlying motion and cross-motion (*see Matter of Proctor–Shields v. Shields*, 74 A.D.3d at 1348, 904 N.Y.S.2d 183).

Accordingly, it is hereby

ORDRED that motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: May 21, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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