

4Media Group, Inc. v RXMedical Dynamics, LLC

2025 NY Slip Op 33106(U)

August 13, 2025

Supreme Court, New York County

Docket Number: Index No. 654986/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

4MEDIA GROUP, INC.

Plaintiff,

- v -

RXMEDICAL DYNAMICS, LLC,

Defendant.

-----X

INDEX NO. 654986/2023

MOTION DATE 08/07/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Defendant’s motion to vacate this Court’s order striking its answer and the note of issue filed by plaintiff is granted.

Background

In this action concerning an unpaid invoice in the amount of \$14,250, the Court set a conference following former counsel for defendant’s motion to withdraw as attorney for defendant (NYSCEF Doc. No. 25). That decision warned that defendant’s failure to appear via counsel at the next scheduled conference would result in the striking of their answer (*id.*). That is precisely what occurred at the conference; defendant did not show up and the answer was stricken (NYSCEF Doc. No. 28).

Defendant now moves to vacate that order and the note of issue for an inquest filed by plaintiff. Defendant, now represented by new counsel, explains that it simply overlooked the email from prior counsel informing it of the withdrawal motion and was not aware of the conference scheduled by the Court. It attaches the affirmations of Chief of Client Services and

Chief Medical and Scientific Officer to support its claims of a reasonable excuse for not appearing at the conference and a meritorious defense.

In opposition, plaintiff complains that defendant did not raise a reasonable excuse and that “being busy” is not a basis to vacate this Court’s order. Plaintiff focuses on the fact that the Chief Medical and Scientific Officer sent emails about the prior counsel for defendant’s motion to withdraw (*see* NYSCEF Doc. No. 23) which suggests that defendant knew it should have appeared at the conference. With respect to the meritorious defense, plaintiff insists that defendant’s version of events is incorrect. It argues that defendant only offers a self-serving account where defendant, during a phone call, unilaterally cancelled the work order that forms the subject matter of this lawsuit.

In reply, defendant points out that plaintiff only submitted opposition from its attorney and not from the plaintiff itself. It argues that should compel the Court to reject plaintiff’s arguments about the merits of this case. Defendant emphasizes that it has cited a reasonable excuse for its default.

Discussion

“A party seeking to vacate a default must demonstrate both a reasonable excuse and the existence of a meritorious defense” (*Mut. Mar. Off., Inc. v Joy Const. Corp.*, 39 AD3d 417, 419 [1st Dept 2007]).

The Court grants the motion as defendant satisfied both elements. Although plaintiff is understandably frustrated with the fact that defendant claims it was busy and overlooked the fact that it needed to find new counsel and appear at the conference, that is not a basis to deny the motion. People make mistakes and overlook emails all the time (*see id.* [observing that an attorney misplacing motion papers could constitute a reasonable excuse to vacate a default]).

Here, defendant remedied its error and obtained an attorney only a few weeks after the Court struck its answer. And then that attorney had to make this motion – it would have been cheaper to hire the attorney earlier and avoid this motion. That suggests that defendant had an oversight as opposed to a strategy of delay. In any event, “there exists a strong public policy in favor of disposing of cases on their merits” (*Johnson-Roberts v Ira Judelson Bail Bonds*, 140 AD3d 509, 509 [1st Dept 2016]).

The Court also finds that defendant cited a meritorious defense through the affirmations from its employees (NYSCEF Doc. Nos. 38 and 39). Plaintiff’s attempt to dispute defendant’s version of events is not a reason to deny the instant motion; that is for trial.

Accordingly, it is hereby

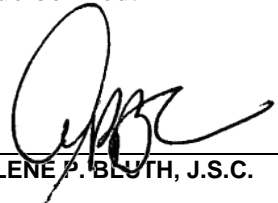
ORDERED that defendant’s motion to vacate this Court’s order striking its answer and the note of issue is granted; and it is further

ORDERED the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk’s Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that such upon 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 parties are hereby directed to appear for a discovery conference on November 12, 2025 at 10 a.m. By November 5, 2025, a week prior to the conference, the parties are directed to upload a proposed discovery stipulation or letters explaining why no such agreement could be reached. The failure to upload anything about discovery by November 5, 2025 will result in an adjournment of the conference or an order directing that a note of issue be filed.

8/13/2025			
DATE			ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE