

Wisloff v White

2026 NY Slip Op 31679(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 805017/2025

Judge: Kathy J. King

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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. KATHY J. KING PART 06

Justice

-----X

THOMAS WISLOFF, and ERIN WISLOFF,
Plaintiffs,

INDEX NO. 805017/2025

**MOTION DATE 03/11/2026,
03/03/2026**

MOTION SEQ. NO. 001 002

- v -

NIA WHITE, KEVIN MARTINEZ, NEW YORK
PRESBYTERIAN HOSPITAL, COLUMBIA UNIVERSITY
IRVING MEDICAL CENTER, and JOHN DOES,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21
were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26
were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, Plaintiffs, Thomas Wisloff and Erin Wisloff (collectively,
“Plaintiffs”), move for an Order:

- 1) pursuant to CPLR 3215, granting default judgment in Plaintiffs’ favor and against Defendant Nia White, RN (“RN White”) on the issue of liability on the ground that Defendant RN White failed to respond to the Summons and Verified Complaint or otherwise appear in this action and setting this matter down for an inquest on damages (Motion sequence 001); and
- 2) pursuant to CPLR 3025(b) granting leave to Plaintiffs to amend their Verified Complaint to join as Defendant AMN Healthcare, and, pursuant to CPLR 203(c), deeming the amendment to relate back to the date of filing of the Verified Complaint (motion sequence 002).

The motions are unopposed and are consolidated for purposes of disposition.

BACKGROUND

The action arises from post-procedural care provided to Plaintiff, Thomas Wisloff, on August 18, 2022, at New York Presbyterian Hospital (“NYPH”). Plaintiffs commenced this medical malpractice action on January 27, 2025, by filing a Summons and Verified Complaint and a Certificate of Merit.

The Summons and Complaint were served upon Defendants NYPH and Columbia University Irving Medical Center (“CUIMC”) in early February 2025. Both entities joined issue by filing Verified Answers on February 18, 2025.¹

On April 15, 2025, Plaintiff served Defendant RN White pursuant to CPLR 308(2) by delivering the Summons and Complaint to a person of suitable age and discretion at her residence in Middle Island, New York, followed by a first-class mailing on April 16, 2025. The affidavit of service was filed on April 24, 2025, making service complete as of May 4, 2025.

Pursuant to CPLR 320, Defendant RN White’s time to appear or respond expired on June 3, 2025. To date, RN White has failed to answer, move, or otherwise appear in this action.

Plaintiff now moves for the entry of a default judgment against her.

Further, and following the commencement of this action, counsel for NYPH informed Plaintiff that RN White was not an employee of the hospital at the time of the alleged malpractice. Instead, information was provided suggesting that RN White may have been employed by non-party AMN Healthcare. Based on this new information, Plaintiff moves for leave to file an Amended Verified Complaint to add AMN Healthcare as a defendant under a theory of vicarious liability for the acts of its alleged employee, RN White.

Plaintiffs’ motions are both submitted to the Court without opposition.

¹ While Kevin Martinez, R.N., was originally named as a defendant, the action against him was subsequently dismissed without prejudice after it was determined he was not involved in Plaintiff’s treatment.

DISUSSION

DEFAULT JUDGMENT (MOTION SEQ. 001)

While Plaintiffs have established that Defendant White was properly served pursuant to CPLR 308(2) and has subsequently failed to answer or appear, a motion for a default judgment must be supported by proof of the facts constituting the claim (*see* CPLR 3215[f]; *see also* *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003]). In the instant matter, Plaintiffs rely upon the Verified Complaint to satisfy this requirement. However, the verification was executed by Plaintiffs' counsel rather than the parties themselves. It is well settled that a complaint verified by an attorney is insufficient to establish the merits of a claim for the purposes of CPLR 3215 (*see* CPLR 3215[f]; *see also* *Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]).

Thus, Plaintiffs' motion for default judgment is denied without prejudice to renew upon the submission of proper evidentiary papers.

AMENDMENT OF THE PLEADINGS (MOTION SEQUENCE 002)

The branch of Plaintiffs' motion seeking leave to amend the complaint to join AMN Healthcare as a defendant is granted without opposition. Pursuant to CPLR 3025 (b), leave to amend a pleading shall be freely given absent prejudice or surprise (*see* *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). Here, the claims against AMN Healthcare satisfy the relation-back doctrine as they arise out of the same conduct or occurrence as the original pleading (*see* CPLR 203[c]; *Buran v Coupal*, 87 NY2d 173, 178 [1995]). Specifically, Plaintiffs have established that AMN Healthcare is united in interest with Defendant RN White by virtue of their alleged employer-employee relationship and that AMN Healthcare knew or should have known that, but for a mistake as to the identity of the proper parties, the action would have been commenced against it (*id.* at 181). Although the motion for a default judgment

against Defendant RN White is denied for the evidentiary deficiencies discussed supra, the proposed amendment is neither palpably insufficient nor patently devoid of merit, as it is predicated upon a viable theory of vicarious liability for RN White’s conduct; thus, in the absence of any demonstrable prejudice to the existing parties, leave to amend is appropriate.

Accordingly, it is hereby

ORDERED that Plaintiffs’ motion for default judgment (motion sequence 001) is denied; and it is further

ORDERED that Plaintiffs’ motion to amend the pleadings so as to add AMN Healthcare as a defendant (motion sequence 002) is granted; and it is further

ORDERED that the Amended Verified Complaint, in the form annexed to the motion papers (NYSCEF Doc. No. 24), shall be deemed served upon the parties who have appeared in this action upon service of a copy of this Order with Notice of Entry; and it is further

ORDERED that Plaintiffs shall serve the Amended Verified Complaint upon the newly added defendant, AMN Healthcare, together with a Supplemental Summons, in accordance with the CPLR, within 30 days of the date of this Order; and it is further

ORDERED, that the Clerk is directed to enter judgment in accordance with this Order and shall amend the caption to read as follows:

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

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THOMAS WISLOFF, and ERIN WISLOFF,

Plaintiff,

Index No.: 805017/2025

-against-

NIA WHITE, KEVIN MARTINEZ,
NEW YORK PRESBYTERIAN HOSPITAL,
COLUMBIA UNIVERSITY IRVING MEDICAL CENTER,

AMN HEALTHCARE,
and JOHN DOES,

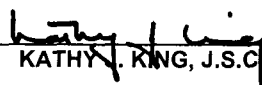
Defendants.

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and it is further

ORDERED that within twenty (20) days of the date of this Order, Plaintiffs shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk’s Office, which shall be effectuated 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.

This constitutes the decision and order of the Court.

<u>4/10/2026</u> DATE		 KATHY KING, J.S.C
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> OTHER
	<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