

Root Ins. Co. v A & R Med. Supply Corp.

2026 NY Slip Op 30896(U)

March 11, 2026

Supreme Court, New York County

Docket Number: Index No. 161960/2024

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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ROOT INSURANCE COMPANY,
Plaintiff,

- v -

A AND R MEDICAL SUPPLY CORP., ABOHUSSEIN PT,
P.C.,AETHER EQUIPMENT, LLC,ALPHA DELTA OMEGA
DIAGNOSTICS, INC.,APOLLO CLINICAL LABORATORIES,
INC. D/B/A QUALITY LABORATORY SERVICES,
INC.,ARTE MEDICAL PRIMARY CARE, P.C.,ATLANTIC
MEDICAL & DIAGNOSTIC, P.C.,AUSTIN SUPPLY,
INC.,BANDB SUPPLY, INC.,COMMUNITY MEDICAL CARE
OF N.Y., P.C.,CR MEDICAL CARE, P.L.L.C., EMPIRE
STATE AMBULATORY SURGERY CENTER, FAMILY
PHARMACY GROUP, INC. D/B/A X PHARMACY, IMAGING
CENTER OF ENGLEWOOD, LLC,JAMAICA AVENUE
SUPPLY, INC.,MEDEXPRESS PHARMACY, INC. D/B/A
ULTRACARE PHARMACY, NAMASTE PSYCHOLOGICAL
SERVICES, P.C.,NORTHEAST MEDICAL DEVICES,
LLC,NY BALANCE ACUPUNCTURE, P.C.,PHYSIO
PHARMACY, INC.,PULSE MEDICAL CARE, P.C.,RAFAEL
YAAKOBV FAMILY HEALTH NP, P.C.,SEDATION
VACATION PERIOPERATIVE MEDICINE, PLLC,SOUTH
SHORE FAMILY HEALTH NP, P.C.,TITAN DIAGNOSTIC
IMAGING SERVICES, INC.,UPTOWN HEALTH CARE
MANAGEMENT, INC. A/K/A EAST TREMONT MEDICAL
CENTER A/K/A ETM-ASC AMBULATORY SURGERY, W
JOSEPH GORUM MD, P.C.,WALMED EQUIPMENT,
LLC,WESTEND SUPPLY, INC.,HENRY RODRIGUEZ,
DENY LUGO, PEDRO SALAZAR

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 52, 53, 54, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 75, 78, 79, 80

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, and good cause having been shown, Plaintiff's motion for
default judgment is denied without prejudice with leave to renew upon naming a necessary party
to this action - namely Krisnette Perdomo. The cross motion by Defendants Austin Supply Inc.,
A and R Medical Supply Corp., and Jamaica Avenue Supply, Inc. (collectively "Cross Movants")

to compel acceptance of their late answers or alternatively to dismiss pursuant to CPLR 3211(a)(10) is granted in part and denied in part.

As a preliminary matter, there is no opposition filed with respect to the cross motion to compel acceptance of Defendants Austin Supply Inc., A and R Medical Supply Corp., and Jamaica Avenue Supply, Inc.'s Answers. Moreover, the Court is mindful of New York's public policy in favor of resolving cases on the merits, and Plaintiff has not shown how it is prejudiced by accepting the late answers (*see, e.g. Genao v Salcedo Maintenance Corp.*, 168 AD3d 528, 528-529 [1st Dept 2019] citing *Yea Soon Chung v Mid Queens LP*, 139 AD3d 490 [1st Dept 2016]). Therefore, the cross motion is granted to the extent Plaintiff is compelled to accept Defendants Austin Supply Inc., A and R Medical Supply Corp., and Jamaica Avenue Supply, Inc.'s late Answers.

The branch of the cross motion seeking dismissal pursuant to CPLR 3211(a)(10) is granted solely to the extent that Plaintiff is directed to file and serve an Amended Complaint naming Krisnette Perdomo as a party to this action. The Cross Movants are correct that Krisnette Perdomo, who is the policy holder in this declaratory judgment action and who allegedly made material misrepresentations with respect to the policy and failed to appear for examinations under oath, is a necessary party as she may be inequitably affected by a judgment in this action (*see* CPLR 1001[a]).

However, dismissal for nonjoinder of a necessary party is highly disfavored and only occurs as a last resort (*see Swezey v Lynch*, 87 AD3d 119, 132 [1st Dept 2011] citing *L-3 Communications Corp. v Safenet, Inc.*, 45 AD3d 1, 11 [1st Dept 2007]). Instead, the more appropriate remedy is to order Plaintiff to file and serve an Amended Complaint naming the necessary party (*see Genger v Genger*, 87 AD3d 871, 874 [1st Dept 2011] citing *Leeward Isles*

Resorts, Ltd. v Hickox, 61 AD3d 622 [1st Dept 2009]; *see also Censi v Cove Landings, Inc.*, 65 AD3d 1066, 1068 [2d Dept 2009]). Therefore, the branch of the cross motion seeking dismissal is denied, but Plaintiff is directed to amend its Complaint to name Krisnette Perdomo as a necessary party.

Because Plaintiff failed to name a necessary party and is directed to file and serve an Amended Complaint, the motion for default judgment is denied, without prejudice, with leave to renew after serving the Amended Complaint on the defaulting parties.

Accordingly, it is hereby,

ORDERED that the motion for default judgment is denied, without prejudice, with leave to renew after amending the Complaint to include Krisnette Perdomo as a necessary party, and after the parties allegedly in default have been served with the amended complaint; and it is further

ORDERED that the cross motion to compel Plaintiff to accept the late answers of Defendants Austin Supply Inc., A and R Medical Supply Corp., and Jamaica Avenue Supply, Inc. is granted, and Plaintiff is compelled to accept the answers filed by Defendants Austin Supply Inc., A and R Medical Supply Corp., and Jamaica Avenue Supply, Inc.; and it is further

ORDERED that the cross motion to dismiss for failure to name a necessary party is denied, but Plaintiff is directed to, within thirty days of entry of this Decision and Order, file and serve an Amended Complaint naming Krisnette Perdomo as a necessary party; and it is further

ORDERED that the active parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed order be submitted any later than May 26, 2026; and it is further

ORDERED that should the parties elect to engage in Court sponsored mediation rather than discovery, the parties shall notify the Court via e-mail so an order of referral to the Court's sponsored ADR program can be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all active parties via NYSCEF and on all defaulting parties via first-class mail at their last known addresses.

This constitutes the Decision and Order of the Court.

3/11/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
| | | | | REFERENCE | |