

**Hereford Ins. Co. v M & M Supplies Group, Inc.**

2020 NY Slip Op 30744(U)

March 9, 2020

Supreme Court, New York County

Docket Number: 654551/2019

Judge: Arthur F. Engoron

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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. ARTHUR F. ENGORON PART IAS MOTION 37EFM**

*Justice*

-----X  
HEREFORD INSURANCE COMPANY,  
  
Plaintiff,

INDEX NO. 654551/2019  
MOTION DATE 12/12/2019  
MOTION SEQ. NO. 001

- v -

M & M SUPPLIES GROUP INC; STARLIGHT PT, PC A/K/A  
STARLIGHT P.T. P.C.; SMOOTH TOUCH ACUPUNCTURE  
P.C.; MELISSA SALLAH; KAZU ACUPUNCTURE; P.C.;  
GENTLE TOUCH CHIROPRACTIC CARE PLLC;  
ANANTHAKUMAR THILLAINATHAN; NEW PORT  
ACUPUNCTURE P.C.; NY QUEENS PHYSICAL THERAPY  
PC; BROOKDALE HOSPITAL A/K/A THE BROOKDALE  
UNIVERSITY HOSPITAL AND MEDICAL CENTER A/K/A  
BROOKDALE HOSPITAL MEDICAL CENTER; OPUS  
PSYCHOLOGICAL SERVICES, P.C.; M & D ELITE  
PHARMACY, LLC; CLAUDE CADEUMAG; CLEANTINE  
JOSEPH; NAROME AUGUSTE; WENDY CADEUMAG,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 62, 63, 64, 65, 67

were read on this motion for JUDGMENT - DEFAULT

Upon the foregoing documents, plaintiff's motion for a default judgment is granted in part and denied in part.

**Background**

On January 7, 2019, defendants Claude Cadeumag ("Claude C."); Cleantine Joseph ("Joseph"), and Narome Pierre Auguste ("Auguste") (collectively, the "Claimants") were passengers in a vehicle insured by plaintiff, Hereford Insurance Company, and driven by defendant Wendy Cadeumag. Plaintiff asserts that the corresponding police report states that the Claimants reported no injuries and declined medical attention at the scene of the subject accident.

The Claimants subsequently alleged that they sustained significant bodily injuries arising out of the subject accident and received medical treatment from co-defendants M & M Supplies Group, Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Melissa Sallah DC; Kazu Acupuncture, P.C.; Gentle Touch Chiropractic Care PLLC; Ananthakumar Thillainathan MD; New Port Acupuncture P.C.; NY Queen Physical Therapy PC; Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical

Center; Opus Psychological Services, P.C.; and M & D Elite Pharmacy, LLC. Plaintiff assigned claim number 81573 to all No-Fault claims submitted by defendants that arose out of the subject accident. Claude C. and Auguste failed to appear for their Independent Medical Examinations (“IMEs”), and plaintiff denied their claims.

On August 12, 2019, plaintiff commenced the instant action against M & M Supplies Group, Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Melissa Sallah DC; Kazu Acupuncture, P.C.; Gentle Touch Chiropractic Care PLLC; Ananthakumar Thillainathan MD; New Port Acupuncture P.C.; NY Queen Physical Therapy PC; Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center; Opus Psychological Services, P.C.; M & D Elite Pharmacy, LLC; Claude Cadeumag; Cleantine Joseph; Narome Pierre Auguste; and Wendy Cadeumag. Plaintiff asserts that, although the Claimants appeared for their Examinations Under Oath (“EUOs”), “their testimony was questionable and contained many material misrepresentations and inaccuracies that raised further issues about the legitimacy of the loss and necessity of the alleged medical treatments provided.” (NYSCEF Doc. No. 1.)

Plaintiff seeks a judgment (1) on the first cause of action to declare that plaintiff owes no duty to pay any and all no-fault claims submitted on behalf of Claude C. and Auguste, who failed to appear for their scheduled IMEs; (2) on the second cause of action, for misrepresentation, to declare that plaintiff owes no duty to pay any and all no-fault claims arising out of the subject accident; (3) on the third cause of action, to declare that plaintiff owes no duty to pay the claims of defendants including any and all no-fault claims; any and all uninsured, underinsured, supplementary-uninsured, or supplementary-underinsured motorist-benefit claims; any and all medical-payment claims; and any and all bodily injury liability benefits under the policy arising out of the subject accident; and (4) on the fourth cause of action, to stay permanently all no-fault arbitrations and lawsuits that defendants brought arising out of the subject accident.

On September 17, 2019, Melissa Sallah DC; Ananthakumar Thillainathan MD; and Opus Psychological Services, P.C. jointly answered with various admissions, denials, and twenty-three Affirmative Defenses.

In an October 14, 2019 Stipulation, plaintiff discontinued, with prejudice, the instant action as against NY Queens Physical Therapy PC, only.

Plaintiff now moves, pursuant to CPLR 3215(a), for a default judgment against M & M Supplies Group Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Kazu Acupuncture, P.C.; Gentle Touch Chiropractic Care PLLC; New Port Acupuncture P.C.; NY Queens Physical Therapy PC; Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center; M & D Elite Pharmacy, LLC; Claude Cadeumag; Cleantine Joseph; Narome Pierre Auguste; and Wendy Cadeumag.

On November 22, 2019, defendant Kazu Acupuncture, P.C. answered plaintiff’s Complaint, seeking an Order (1) denying plaintiff’s motion in its entirety; and (2) granting said defendant an extension of time to answer. On the same day, Kazu Acupuncture, P.C. notified plaintiff that, on December 12, 2019, it would cross-move, pursuant to CPLR 317 and 5015(a), to vacate

defendant's default and for an Order, pursuant to CPLR 3012(d), to extend said defendant's time to appear and plead. (NYSCEF Doc. No. 62.) Kazu Acupuncture, P.C. alleges that it did not receive notice of the instant action until late October 2019.

### Discussion

Plaintiff has established that it is entitled on the merits to a default judgment against M & M Supplies Group Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Gentle Touch Chiropractic Care PLLC; New Port Acupuncture P.C.; Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center; M & D Elite Pharmacy, LLC; Claude Cadeumag; Cleantine Joseph; Narome Pierre Auguste; and Wendy Cadeumag by complying with CPLR 3215(f) by submitting the following: the pleadings; the September 20, 2019 Affidavit of Tony Singh, plaintiff's No-Fault Claims Supervisor and Medical Management Specialist; the September 23, 2019 Affidavit of Stephen Englert, a Special Investigative Unit Investigator with plaintiff; and the October 16, 2019 Affirmation of Timothy R. Bishop, Esq.

On October 14, 2019, plaintiff discontinued this action as against NY Queens Physical Therapy PC.

To date, the defendants named in the Notice of Motion (except for Kazu Acupuncture, P.C. and the discontinued NY Queens Physical Therapy PC) have not opposed or otherwise responded to the instant motion, and their time to do so has expired.

Plaintiff served M & M Supplies Group, Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Gentle Touch Chiropractic Care PLLC; New Port Acupuncture P.C.; Opus Psychological Services, P.C.; and M&D Elite Pharmacy, LLC pursuant to BCL §306. However, plaintiff failed to serve said defendants with a second notice as required by BCL §306 and CPLR 3215(g)(4).

### Conclusion

Thus, for the reasons stated herein, the motion of plaintiff, Hereford Insurance Company, for a default judgment is granted as against Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center; Claude Cadeumag; Cleantine Joseph; Narome Pierre Auguste; and Wendy Cadeumag.

This Court denies plaintiff's motion for a default judgment as against M & M Supplies Group Inc.; Starlight PT, PC a/k/a Starlight P.T. P.C.; Smooth Touch Acupuncture P.C.; Gentle Touch Chiropractic Care PLLC; New Port Acupuncture P.C.; and M & D Elite Pharmacy, LLC, as plaintiff failed to complete proper service of process on said defendants.

This Court grants defendant Kazu Acupuncture, P.C.'s cross-motion to vacate the default as against said defendant only, and this Court deems said defendant's November 22, 2019 Answer as timely. Plaintiff's motion for a default judgment is denied as against Kazu Acupuncture, P.C.

The Clerk is hereby directed to enter judgment accordingly, declaring that (1) plaintiff owes no duty to pay any and all no-fault claims submitted on behalf of Claude C. and Auguste arising out

of the subject accident; (2) plaintiff owes no duty to pay any and all no-fault claims submitted by Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center arising out of the subject accident; (3) plaintiff owes no duty to pay the claims of Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center, including any and all no-fault claims; any and all uninsured, underinsured, supplementary-uninsured, or supplementary-underinsured motorist-benefit claims; any and all medical-payment claims; and any and all bodily injury liability benefits under the policy arising out of the subject accident; and (4) permanently staying all no-fault arbitrations and lawsuits that Brookdale Hospital a/k/a The Brookdale Hospital and Medical Center a/k/a Brookdale Hospital Medical Center brought arising out of the subject accident.

Plaintiff and answering defendants, Melissa Sallah DC; Ananthakumar Thillainathan MD; Opus Psychological Services, P.C.; and Kazu Acupuncture, P.C. are hereby directed to appear for a preliminary conference on Tuesday, March 31 at 10:00 AM, 60 Centre Street, Room 418, New York, NY.



3/9/2020

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: