

<b>Country-Wide Ins. Co. v Francis</b>
2022 NY Slip Op 30699(U)
March 3, 2022
Supreme Court, New York County
Docket Number: Index No. 652935/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 652935/2021
MOTION DATE 02/22/2022
MOTION SEQ. NO. 001

- v -

KAYDEEM FRANCIS, LENOX HILL RADIOLOGY AND
MEDICAL IMAGING ASSOCIATES, P.C., WARREN
STREET ORTHOPEDIC REHABILITATION, P.C., FIFTH
AVENUE SURGERY CENTER, LLC, LR MEDICAL,
PLLC, AURORA MEDICAL SERVICES PLLC, ISLAND
AMBULATORY SURGERY CENTER, L.L.C., OKSANA
PODHAYETSKA LAC, HEALTH AND COMFORT RX
INC., IGOR AMIGUD PHYSICIAN P.C., UNITED
PHYSICIANS PLLC, AHMED ABDELAAL, EMPIRICAL
ACUPUNCTURE PLLC, NEW YORK THERA PHYSICAL
THERAPY P.C., GESHER PSYCHOLOGICAL SERVICES
P.C., PRECISE ACUPUNCTURE, P.C.

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26,
27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on June 16, 2018 wherein Kaydeem
Francis (KF) was allegedly injured while in a vehicle insured by plaintiff. KF filed a claim with
plaintiff as a purported injured person under an insurance policy, number U 6523927 18, issued
by plaintiff.

Plaintiff commenced this action on or about May 4, 2021, seeking a declaratory judgment
against Kaydeem Francis, Lenox Hill Radiology And Medical Imaging Associates, P.C., Warren
Street Orthopedic Rehabilitation, P.C., Fifth Avenue Surgery Center, LLC, LR Medical, PLLC,
Aurora Medical Services PLLC, Island Ambulatory Surgery Center, L.L.C., Oksana Podhayetska

Lac, Health And Comfort Rx Inc., Igor Amigud Physician P.C., United Physicians PLLC, Ahmed Abdelaal, Empirical Acupuncture PLLC, New York Thera Physical Therapy P.C., Gesher Psychological Services P.C., And Precise Acupuncture, P.C.

On May 24, 2021 Gesher Psychological Services, P.C filed an answer. On June 29, 2021, Aurora Medical Services, PLLC and Health and Comfort Rx Inc filed an answer.

### **PENDING MOTION**

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendants Kaydeem Francis, Lenox Hill Radiology And Medical Imaging Associates, P.C., Warren Street Orthopedic Rehabilitation, P.C., Fifth Avenue Surgery Center, LLC, LR Medical, PLLC, Island Ambulatory Surgery Center, L.L.C., Oksana Podhayetska Lac, Igor Amigud Physician P.C., United Physicians PLLC, Ahmed Abdelaal, Empirical Acupuncture PLLC, New York Thera Physical Therapy P.C., And Precise Acupuncture, P.C. These defendants have failed to appear or submit opposition.

### **DISCUSSION**

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

On January 10, 2022, plaintiff filed a Request for Judicial Intervention (RJI). The portion of the RJI form entitled “Related Cases” was left blank. However, a search of court records reveals five (5) pending actions, involving plaintiff and defendant KF, and two of those actions

involves defendants named in this action. A Bronx County Civil Court action between Warren Street Orthopedic Rehabilitation and plaintiff herein, under index no. CV 701162/19/BX, wherein Warren Street Orthopedic Rehabilitation is represented by counsel, and a Kings County Civil Court action between Oksana Podhayetska LAC and plaintiff herein, under index no. CV 717266/19/KI, wherein Oksana Podhayetska LAC is represented by counsel. Counsels in those actions were not served with notice of this action or of this motion.

Although not technically required by statute, when a defendant is known to have been represented in a pending related action, the better practice is to serve a courtesy copy of the motion on the attorney representing the other party in a related proceeding.

In addition, although plaintiff seeks a permanent stay on pending arbitration or litigation between the parties, plaintiff fails to specifically identify any pending arbitration or litigation between the parties. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. For these reasons, plaintiff's motion for a default judgment is denied without prejudice to renewal, on notice to counsel for any defendant and an affidavit listing any pending arbitration or litigation, or a statement affirming that none exists.

### **CONCLUSION**

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants Kaydeem Francis, Lenox Hill Radiology And Medical Imaging Associates, P.C., Warren Street Orthopedic Rehabilitation, P.C., Fifth Avenue Surgery Center, LLC, LR Medical, PLLC, Island Ambulatory Surgery Center, L.L.C., Oksana Podhayetska Lac, Igor Amigud Physician P.C., United Physicians PLLC, Ahmed Abdelaal, Empirical Acupuncture PLLC, New York Thera

Physical Therapy P.C., And Precise Acupuncture, P.C. is denied without prejudice ; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.

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3/3/2022  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: