

**Hereford Ins. Co. v A to Z Supply Servs., Inc.**

2024 NY Slip Op 33545(U)

October 7, 2024

Supreme Court, New York County

Docket Number: Index No. 153731/2022

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

A TO Z SUPPLY SERVICES, INC.,AUTUMN PT  
PC,CITIMED SURGERY CENTER, LLC,EMED PHARMACY  
CORP., EMOTE MEDICAL SERVICES, PC,EMUNA  
INC.,FRANKLIN SQUARE SERVICES, INC.,HEALTH  
NEXUS, INC.,IMOVE PHYSICAL THERAPY,  
PC,INTERVENTIONAL PHYSICAL MEDICINE & REHAB  
MEDICINE OF NEW YORK PLLC,KNAPP ORTHO  
SERVICES, INC.,MARK H VINE, NY UNION PHARMACY,  
INC.,OLUBUSOLA BRIMMO, REFUAH DIAGNOSTIC  
LLC,SEDATION VACATION PERIOPERATIVE MEDICINE,  
PLLC,TRI-BOROUGH NY MEDICAL PRACTICE,  
PC,UNISOFT LLC,WELLNESS MEDICAL IMAGING,  
PC,WIZARD COMPUTER SERVICES, INC.,DARIUS  
COVINGTON, LEONA STOKES, ORLANDO COVINGTON,

Defendants.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 115, 116, 117, 118, 119, 120, 122, 123

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

Upon the foregoing documents, plaintiff’s motion for a default judgment is granted, in part, to the extent set forth below.

Plaintiff commenced this action on April 29, 2022, seeking a declaratory judgment that it is not obligated to pay no-fault benefits for any medical treatment defendants Darius Covington, Orlando Covington and Leona Stokes received for injuries allegedly sustained in a motor vehicle collision on November 15, 2021 (NYSCEF Doc. No. 1 [Complaint at ¶26]). Plaintiff now moves, without opposition, for a default judgment against defendants: Caplet Pharmacy Inc; Downtown Brooklyn PT, PC; Future Care Registered Professional Nursing PLLC d/b/a Future Care Internal

Medicine; All Health Dme Inc; Bingo Supplies Inc; Fontto Supply Services Inc; Glenmore Medical, PC; Hunt Supply Inc; Lincoln Diagnostics; Lit Chemists Corp; Macintosh Medical, PC; Open Acupuncture, PC; Rehab Concepts Physical Therapy PC; Samir Zaqdan a/k/a Samir Mohamed Hanafy Zaqdan DPT; and Vargas Rx Corp d/b/a 14th St Pharmacy (collectively, the “Defaulting Defendants”). Plaintiff argues that the motion should be granted because it has established that defendant Leona Stokes breached a condition precedent to coverage by failing to appear for several duly scheduled independent medical examinations and defendants Darius Covington and Orlando Covington failed to subscribe their examinations under oath (“EUO”) transcripts, another condition precedent to coverage (Id. at ¶¶24, 33).

### DISCUSSION

In order to establish a default judgment pursuant to CPLR 3215, plaintiff must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendants’ default in answering or appearing (See Gordon Law Firm, P.C. v Premier DNA Corp., 205 AD3d 416, 416 [1st Dept 2022]). Where service of process has been effected through the New York Secretary of State, CPLR 3215(g)(4) further mandates that plaintiff must also submit an affidavit of service documenting an additional service of the summons to defendant’s last known address by first-class mail (See e.g., Sterk-Kirch v Uptown Communications & Elec. Inc., 124 AD3d 413, 414 [1st Dept 2015]).

The motion is denied as to defendants Glenmore Medical, PC, and Macintosh Medical, PC, as this action has been discontinued against them by stipulation (See NYSCEF Doc. No. 121, 125). The motion is also denied as to defendants Samir Zaqdan a/k/a Samir Mohamed Hanafy Zadqan DPT and Future Care Registered Professional Nursing PLLC d/b/a Future Care Internal Medicine, as plaintiff has not established that it served the amended summons and complaint on them and

submits only affidavits of non-service (See NYSCEF Doc. No. 118) which are, of course, insufficient to do so (See Sanchez v Rosendo, 16 Misc 3d 1115(A) [Sup Ct, Kings County 2007]). Finally, the motion is denied as to defendant Caplet Pharmacy Inc, as the affidavit of service submitted by plaintiff states only that defendant was served with a “Decision & Order with Notice of Entry” via the New York State Secretary of State without reference to the amended summons and complaint or any indication that these documents were included in such service (See NYSCEF Doc. No. 83).

The motion is granted, however, as to Downtown Brooklyn PT, PC; All Health DME Inc; Bingo Supplies Inc, Fontto Supply Services Inc; Hunt Supply Inc; Lincoln Diagnostics; Lit Chemists Corp; Open Acupuncture, PC; Rehab Concepts Physical Therapy PC; and Vargas RX Corp DBA 14<sup>th</sup> St Pharmacy. Plaintiff has established its service of the summons and complaint upon these defendants and its compliance with the additional service requirements pursuant to CPLR 3215(g)(4).<sup>1</sup> Plaintiff has further provided proof of the facts constituting the claim through the affidavit of Joronda McBurnie, who attests to the failure of defendants Orlando Covington and Darius Covington to subscribe their EUO transcripts (See e.g., State Farm Fire and Cas. Co. v Atl. Diagnostic, L.L.C., 82 Misc 3d 1229(A) [Sup Ct, NY County 2024]) and Leona Stokes’ failure to appear for scheduled IME’s on two occasions, in violation of 11 NYCRR 65-1.1 (See e.g., Am. Tr. Ins. Co. v Smart Choice Med., P.C., 217 AD3d 492 [1st Dept 2023]).<sup>2</sup>

Accordingly, it is

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<sup>1</sup> The affidavit of service upon defendant Open Acupuncture, PC was not included as an exhibit to this motion but was filed on NYSCEF on May 9, 2024 (NYSCEF Doc. No. 109).

<sup>2</sup> The affidavit of Joronda McBurnie was not included as an exhibit to this motion but was an exhibit submitted with plaintiff’s first motion for a default judgment (NYSCEF. Doc. No. 49).

**ORDERED** that plaintiff's motion for a default judgment as against defendants Glenmore Medical, PC, and Macintosh Medical, PC, is denied, as moot; and it is further

**ORDERED** that plaintiff's motion for a default judgment as against Samir Zaqdan a/k/a Samir Mohamed Hanafy Zadqan DPT; Future Care Registered Professional Nursing PLLC d/b/a Future Care Internal Medicine; and Caplet Pharmacy Inc. is denied; and it is further

**ORDERED** that plaintiff's motion for default judgment as to Downtown Brooklyn PT, PC, All Health DME Inc; Bingo Supplies Inc., Fontto Supply Services Inc, Hunt Supply Inc, Lincoln Diagnostics, Lit Chemists Corp., Open Acupuncture, PC, Rehab Concepts Physical Therapy PC, and Vargas RX Corp d/b/a 14<sup>th</sup> St Pharmacy is granted; and it is further

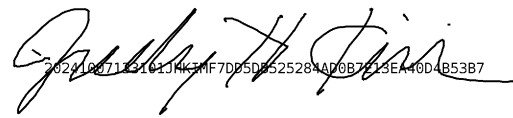
**ORDERED, ADJUDGED, and DECLARED** that plaintiff has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards or benefits to defendants Downtown Brooklyn PT, PC, All Health DME Inc; Bingo Supplies Inc., Fontto Supply Services Inc, Hunt Supply Inc, Lincoln Diagnostics, Lit Chemists Corp., Open Acupuncture, PC, Rehab Concepts Physical Therapy PC, and Vargas RX Corp d/b/a 14<sup>th</sup> St Pharmacy, including but not limited to all no fault claims any and all uninsured, underinsured, supplementary-uninsured, or supplementary underinsured motorist-benefit claims; any and all medical-payment claims; any and all property damage claims; and any and all bodily injury-liability benefits under the Policy arising from the November 15, 2021 collision under claim number 95932; and it is further

**ORDERED** that the action is severed and shall proceed as to the remaining defendants; and it is further

**ORDERED** that within twenty days after the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon all defendants, as well as the County Clerk (60 Centre Street, Room 141B), who re directed to enter judgment accordingly, and it is further

**ORDERED** that such service upon the Clerk of the Court 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.govisupctmanh](http://www.nycourts.govisupctmanh)).

This constitutes the decision, order, and judgment of this Court.



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10/7/2024

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE