

**Wellness Integrative Med., P.C. v First Acceptance
Ins. Co.**

2025 NY Slip Op 33114(U)

August 8, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-714911-24/KI

Judge: Babatunde Akowe

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART 40-NFA

WELLNESS INTEGRATIVE MEDICAL, P.C.,
A/A/O SOLANO, JOSE

Plaintiff,

-against-

FIRST ACCEPTANCE INSURANCE CO.

Defendant.

Index No. CV-714911-24/KI

Motion Cal. # 17/18 Motion Seq.#1/2

DECISION AND ORDER

Recitation, as required by CPLR § 2219(a) of the papers considered in review of this Motion:

Papers:

- Notice of Motion to amend... 1
- Notice of motion to dismiss.. 2
- Plaintiff's Opposition.....3
- Plaintiff's rejection.....4

Upon the foregoing cited papers, and after oral arguments, the Decision/Order on Defendant's motions and Plaintiff's opposition, are decided as follows:

Defendant's motion to amend is GRANTED, Defendant's motion to dismiss is DENIED.

Procedurally, Defendant was served with the Summons and Complaint on February 28, 2024. Defendant's original answer served on May 3, 2024, while late, served as a notice of appearance (*See Deutsche Bank Natl. Trust Co. v Muzac*, 2022 NY Slip Op 02978), but was void of the jurisdictional defense Defendant later sought amendment to include. Therefore, Defendant failed to Answer the Summons and Complaint in the required time period, within thirty (30) days of being served, and failed to timely make a motion to dismiss. *See CPLR 3211(e)*. Having failed to interpose a timely Answer, moving to dismiss within 60 days of an answer or file a timely pre-Answer motion asserting the jurisdictional defense pursuant to CPLR 3211(e), the defendant *waived* that defense. *See Deutsche Bank Natl. Trust Co. v. Hussain*, 78 A.D.3d 989, 990 (2d Dep't, 2010).

Accordingly, while Defendant's answer is amended, this Court retains jurisdiction over the Defendant.

This constitutes the Decision and Order of the Court.

Counsel for Plaintiff – Printed Name and Initials: Richard Rozhik, Esq. / RR

Counsel for Defendant – Printed Name and Initials: Ayse Yetis

Date: August 8, 2025
Brooklyn, New York


Hon. Babatunde Akowe, JCC

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