

Hertz Vehs., LLC v A2K NY Corp.

2025 NY Slip Op 34988(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 159962/2024

Judge: Judy H. Kim

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

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HERTZ VEHICLES, LLC,

Plaintiff,

- v -

A2K NY CORP., ACTIVE LIFE CHIROPRACTIC P.C., AMERICAN PLANET PHYSICAL THERAPY P.C., BEACH MEDICAL REHABILITATION, P.C., BUSINESS ART, INC., CHURCH AVENUE MEDICAL REHABILITATION, P.C., COMMUNITY PHARMACY NY, LLC, DAVID CARMILI, PHYSICIAN, P.C., EAST COAST 17 CORP., FLEX CHIROPRACTIC, P.C., GLOBAL SURGERY CENTER, LLC, GLOSS BK, INC., IN & OUT RX, INC., KCAID PHARMACY, INC., KUMAN MEDICAL SUPPLY, INC., MEDI CASA, INC., MIDWOOD SURGICAL SUPPLIES, INC., NEXT GENERATION DIAGNOSTIC IMAGING, P.C., ORTHOCOR SUPPLY, INC., PARA SUPPLY, INC., PRECISE U.S. DIAGNOSTIC CHIROPRACTIC, P.C., PROFICIENT REHAB CARE PT, PLLC, RIDGEWOOD MEDICAL SERVICES, P.C., ROCK RECOVERY SUPPLY, INC., SAFE ANESTHESIA AND PAIN SERVICES, LLC, STAR MEDICAL DIAGNOSTIC, P.C., STAY WELL CHIROPRACTIC, P.C., SUPPLY CHOICE NYC, INC., TRI-BOROUGH NY MEDICAL PRACTICE, P.C., TRUE RECOVERY SUPPLY, INC., UNIQUE A, INC., NICHOLAS CATARCIO, DANIEL GILLILAND, JOSEPH PETILLO, ANDREW TRICARICO,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 80

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

DECISION + ORDER ON MOTION

Upon the foregoing documents, plaintiff’s motion for default judgment is granted in part.

Plaintiff commenced this action on October 25, 2024, seeking a declaratory judgment that it has no obligation to provide no-fault coverage for the claims of defendants for injuries allegedly sustained by Defendants Nicholas Catarcio, Daniel Gilliland, Joseph Petillo, and Andrew Tricarico

in a motor vehicle accident on April 19, 2024 on the grounds that plaintiff has a founded belief that the collision was not a covered event and that any alleged injuries or treatment did not arise therefrom, and defendants breached a condition precedent to coverage by failing to appear for their Examination Under Oath (“EUO”) and failing to sign and subscribe their EUO transcripts.

On February 27, 2025, plaintiff filed the instant motion for a default judgment against defendants A2K Ny Corp., Active Life Chiropractic P.C., American Planet Physical Therapy P.C., Beach Medical Rehabilitation, P.C., Business Art, Inc., Church Avenue Medical Rehabilitation, P.C., Community Pharmacy NY, LLC, David Carmili, Physician, P.C., East Coast 17 Corp., Flex Chiropractic, P.C., Global Surgery Center, LLC, Gloss BK, Inc., In & Out Rx, Inc., Medi Casa, Inc., Orthocor Supply, Inc., Para Supply, Inc., Precise U.S. Diagnostic Chiropractic, P.C., Ridgewood Medical Services, P.C., Rock Recovery Supply, Inc., Safe Anesthesia And Pain Services, LLC, Star Medical Diagnostic, P.C., Stay Well Chiropractic, P.C., Supply Choice Nyc, Inc., True Recovery Supply, Inc., Unique A, Inc., Nicholas Catarcio, Daniel Gilliland, Joseph Petillo and Andrew Tricarico.

Defendants David Carmili, Physician, P.C., and Ridgewood Medical Services, P.C. interposed an Answer on February 28, 2025, after the filing of this motion (NYSCEF Doc. No. 70) which plaintiff rejected as untimely on March 11, 2025 (NYSCEF Doc No. 73). Defendants In & Out Rx, Inc., and Medi Casa, Inc. interposed an Answer on March 11, 2025 (NYSCEF Doc. No. 72) which plaintiff rejected as untimely on March 20, 2025 (NYSCEF Doc No. 75). Defendant Beach Medical Rehabilitation, P.C. interposed an Answer on April 16, 2025 (NYSCEF Doc. No. 78) which was not rejected and plaintiff replied to its counterclaims (NYSCEF Doc No. 79). Defendant Active Life Chiropractic P.C. interposed its Answer on June 4, 2025 (NYSCEF Doc. No. 81) which plaintiff rejected as untimely on June 20, 2025 (NYSCEF Doc No. 83).

David Carmili, Physician, P.C., Ridgewood Medical Services, P.C. and Beach Medical Rehabilitation, P.C. oppose the motion and seek to compel plaintiff to accept their late answer, per CPLR 3012, arguing that their failure to timely answer was reasonable because plaintiff's service of process on the New York State Secretary of State delayed defendants' receipt of the summons and complaint.

DISCUSSION

In order to establish its entitlement to 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, 165 N.Y.S.3d 691 [1st Dept 2022]). Where, as here, service was effected on certain defendants via the New York State Secretary of State pursuant to BCL §306, plaintiff is also required, per CPLR 3215(g)(4), to establish its additional service of the summons and complaint by first class mail at these defendants' last known address (*see Sterk-Kirch v Uptown Communications & Elec, Inc.*, 124 AD3d 413, 414, 2 N.Y.S.3d 80 [1st Dept 2015]).

As a threshold matter, the motion is denied as against David Carmili, Physician, P.C., Ridgewood Medical Services, P.C. and Beach Medical Rehabilitation, P.C.. and Active Chiropractic P.C.. As to Beach Medical Rehabilitation, plaintiff effectively accepted its answer by replying to counterclaims. David Carmili, Physician, P.C., and Ridgewood Medical Services, P.C.'s answers are deemed timely filed nunc pro tunc, pursuant to CPLR 3012, for the reasons stated in their opposition.¹ As to Active Life Chiropractic P.C., plaintiff's rejection of its answer as untimely was itself untimely (CPLR 2101[f]).

¹ The Court "has the authority, *sua sponte*, to grant relief pursuant to CPLR 3012 (d) even in the absence of a cross motion seeking such relief" (*Willis v New York*, 154 AD2d 289, 290 [1st Dept 1989]).

The motion is otherwise granted, however. Plaintiff submits affidavits of service documenting its service of the summons and complaint on the corporate defendants via the New York State Secretary of State and on the individual defendants pursuant to CPLR 308(2) (NYSCEF Doc. No. 58) and the additional mailing of the summons and complaint upon the corporate defendants as required by CPLR 3215 (g)(4) (NYSCEF Doc. Nos. 66-67). The record also establishes these defendants' default.² Finally, plaintiff has established proof of the facts constituting its claim through the affirmation of Aimee Corum, a No-Fault claims adjuster detailing the basis for plaintiff's founded belief that the injuries alleged did not arise out of the April 19, 2024 collision (NYSCEF Doc. No. 56) (*Hereford Ins. Co. v Interdependent Acupuncture PLLC*, 234 AD3d 410, 411 [1st Dept 2025]). Plaintiff has also established that defendants Catarcio and Tricarico failed to subscribe their EUO transcripts and defendants Gilliland and Petillo failed to appear for their EUOs, condition precedents to coverage (NYSCEF Doc. Nos. 56, 61-63) (*see Kemper Independence Ins. Co. v Cornerstone Chiropractic, P.C.*, 185 AD3d 468 [1st Dept 2020]; *State Farm Mut. Auto. Ins. Co. v AK Global Supply Corp.*, 203 AD3d 556 [1st Dept 2022]).

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is denied as to defendants Active Life, Chiropractic P.C., Beach Medical Rehabilitation, P.C., David Carmili, Physician, P.C., and Ridgewood Medical Services, P.C.; and it is further

ORDERED that plaintiff's motion for a default judgment is granted as against defendants A2K NY Corp., American Planet Physical Therapy P.C., Business Art, Inc., Church Avenue Medical Rehabilitation, P.C., Community Pharmacy NY, LLC, East Coast 17 Corp., Flex

² To the extent In & Out Rx, Inc., and Medi Casa, Inc. interposed an Answer on March 11, 2025 (NYSCEF Doc. No. 72) plaintiff timely rejected this Answer as untimely as required by CPLR 2101(f).

Chiropractic, P.C., Global Surgery Center, LLC, Gloss BK, Inc., In & Out Rx, Inc., Medi Casa, Inc., Orthocor Supply, Inc., Para Supply, Inc., Precise U.S. Diagnostic Chiropractic, P.C., Rock Recovery Supply, Inc., Safe Anesthesia And Pain Services, LLC, Star Medical Diagnostic, P.C., Stay Well Chiropractic, P.C., Supply Choice NYC, Inc., True Recovery Supply, Inc., Unique A, Inc., Nicholas Catarcio, Daniel Gilliland, Joseph Petillo and Andrew Tricarico; and it is further

ORDERED and **ADJUDGED** that plaintiff owes no duty to provide, pay, or honor any no-fault claims of defendants A2K Ny Corp., American Planet Physical Therapy P.C., Business Art, Inc., Church Avenue Medical Rehabilitation, P.C., Community Pharmacy NY, LLC, East Coast 17 Corp., Flex Chiropractic, P.C., Global Surgery Center, LLC, Gloss BK, Inc., In & Out Rx, Inc., Medi Casa, Inc., Orthocor Supply, Inc., Para Supply, Inc., Precise U.S. Diagnostic Chiropractic, P.C., Rock Recovery Supply, Inc., Safe Anesthesia And Pain Services, LLC, Star Medical Diagnostic, P.C., Stay Well Chiropractic, P.C., Supply Choice Nyc, Inc., True Recovery Supply, Inc., Unique A, Inc., Nicholas Catarcio, Daniel Gilliland, Joseph Petillo and Andrew Tricarico in connection with the alleged incident of April 19, 2024 (claim number 1M01M013832752); and it is further

ORDERED that this matter is severed and shall proceed against the remaining defendants; and it is further

ORDERED that plaintiff shall, within twenty days from the date of this decision and order, serve a copy of same with notice of entry upon defendants and upon the Clerk of the Court, who is 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).

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



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12/22/2025

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