

**Burke Physical Therapy, P.C. v State Farm Mut. Auto
Ins. Co.**

2025 NY Slip Op 34511(U)

November 17, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-700572-20/KI

Judge: Javier Ortiz

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART 41

Burke Physical Therapy, P.C.
a/a/o Calderon Sanchez, Elmina Clarinaida,

Plaintiff,

-against-

State Farm Mutual Auto Ins. Co. PIP/BI
Claims,

Defendant.

Index No. CV-700572-20/KI

2/25/25 NFA Motion Cal. #45-46
Motion Seq. #1-2

DECISION AND ORDER

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

Papers

P's Motion & Support.....7
D's Cross-Motion & Support.....5-6
P's Affirmation in Opposition.....9
P's Amended Affirmation in Opposition.....3
D's Affirmation in Reply.....2, 13
P's Exhibits.....4, 10, 16-51
D's Exhibits.....52-76
D's Supplemental Papers.....77
P's Supplemental Papers.....78-88

Upon the foregoing cited papers and after oral argument, Plaintiff's Motion to Dismiss Affirmative Defenses and Defendant's Motion to Dismiss are decided as follows:

Both motions are DENIED. The Court nonetheless finds that Defendant established that it timely mailed verification requests to Plaintiff and issued timely denials. (*See* NYSCEF No. 56.)

The Court first notes that it disagrees with Plaintiff's arguments that Defendant's verification requests here were improper. In *Burke 2 Physical Therapy, P.C. v State Farm Mut. Auto. Ins. Co.*, 85 Misc3d 130(A), 2025 NY Slip Op 50195(U) (App Term, 2d Dept Feb. 14, 2025), the Appellate Term held:

Contrary to plaintiff's [] contention, it was not improper for defendant to seek, during the claim verification stage, information—such as management agreements, W-2 forms, business-related bank records and lease agreements—for the purpose

of determining whether plaintiff was ineligible to collect no-fault benefits due to a failure to meet licensing requirements (*see* 11 NYCRR 65-3.16 [2] [12]; *State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, 827 N.E.2d 758, 794 N.Y.S.2d 700 [2005]). Indeed, if, as plaintiff contends, insurance companies should only be able to obtain such information using discovery demands after litigation has ensued, insurance companies would be confronted with a dilemma—to pay the claims for which the plaintiff may not be eligible to receive reimbursement and then commence a suit to recoup such payment (*see State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d at 322), or refrain from paying and wait until after plaintiff commences litigation to investigate via discovery whether plaintiff is eligible for reimbursement, which risks the insurance company being held liable for years of interest that would have accrued upon the claims in the interim at the rate of two percent per month (*see* 11 NYCRR 65-3.9 [a]), plus attorney’s fees (*see* 11 NYCRR 65-4.6).

Burke, 2025 NY Slip Op 50195(U), at *3-4.¹

In its Amended Opposition,² Plaintiff has included the Affidavit of its owner John A. Nasrinpay, P.T., which states that Mr. Nasrinpay “personally responded [to] and mailed on 03/13/2019 and 04/03/2019 the verification response in issue in this case to the address designated by defendant on the verification requests.” (NYSCEF No. 34 at 2 ¶5.) However, Defendant’s Claim Specialist Timothy Dacey responds that no verification requests were ever received by Defendant from Plaintiff. (*See* NYSCEF No. 6 at p.51 ¶¶19-20.)³ Accordingly, the Court finds that there is an issue of fact for the factfinder to resolve.

The Court notes that a recent decision of The Honorable Sandra Elena Roper found that Plaintiff’s owner’s affidavit in that case was insufficient to establish that he had mailed the requested verification because, in that case, he caveated that the verification was mailed “to the extent such response was proper and, in [his] possession” and that he “responded to and mailed all requested documentation that was proper and which Plaintiff had access to.” (*Burke Physical*

¹ The Court notes that the Appellate Term issued another decision earlier this year against these parties involving assignor Elmina Calderon Sanchez. (*See Burke Physical Therapy, P.C. v State Farm Mut. Auto. Ins. Co.*, 86 Misc3d 128(A), 2025 NY Slip Op 50845(U) [App Term, 2d Dept May 16, 2025].) That Appellate Term decision reversed the lower court decision of The Honorable Sandra Elena Roper which had granted State Farm summary judgment; the Appellate Term instead dismissed the complaint without prejudice on other grounds related to the timeliness of Defendant’s denial. Accordingly, the Court will not consider Defendant’s arguments that Judge Roper’s decision in that action should lead this Court to rule in Defendant’s favor, as that decision is no longer operative.

² In the same case cited above involving these same parties, the Appellate Term indicated that plaintiff’s amended affirmation in opposition could properly be considered by the court and that “plaintiff’s amended papers were not unauthorized sur-reply papers (*see* CPLR 2214 [c].)” (*Burke*, 2025 NY Slip Op 50195(U), at *2.)

³ The Court notes that Plaintiff attached 197 pages of correspondence pertaining to related verification requests. (NYSCEF No. 44.) However, the Court cannot locate any reference to the assignors at issue here and therefore the Court will not consider this correspondence here.

Therapy, P.C. v State Farm Mut. Auto. Ins. Co. PIP/BI Claims, 85 Misc3d 1238(A), 2025 NY Slip Op 50376(U) [Civ. Ct., Kings County Mar. 24, 2025].) However, no such language appears in the affidavit at issue before the Court. (See NYSCEF No. 34.)


The Appellate Term had similarly found Plaintiff's owner's affidavit insufficient where he "stated that he had mailed the requested verification 'to the extent such response was proper and in [his] possession.'" (*Burke Physical Therapy, P.C. v State Farm Mut. Auto. Ins. Co.*, 75 Misc3d 143(A), 2022 NY Slip Op 50623(U) [App Term, 2d Dept 2022].) Again, this language does not appear in the affidavit before the Court. Defendant provides a copy of the affidavit in that other action to the Court here, and a cursory review confirms that the language that the Appellate Term found problematic in that affidavit does not appear in the affidavit currently before the Court. (Compare NYSCEF No. 34 [Nasrinpay 8/3/22 affidavit submitted here] with NYSCEF No. 71 [3/28/21 Nasrinpay affidavit submitted for a different assignor in the *Burke* action before the Appellate Term].)

Based on these key differences between the affidavits, the Court does not have sufficient evidence before it to find that the affidavit is "feigned," as Defendant would have the Court find.

Accordingly, there is an issue of fact for the factfinder to resolve as to whether verification remains outstanding. The case shall proceed to trial on this issue only.

This constitutes the Decision and Order of the Court.

Dated: November 17, 2025
Brooklyn, New York



Hon. Javier Ortiz
Civil Court Kings County

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