

St. Barnabas Hosp. v Fiduciary Ins. Co. of Am.

2011 NY Slip Op 32989(U)

November 7, 2011

Supreme Court, Nassau County

Docket Number: 6689/11

Judge: Joel K. Asarch

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 17

-----X
**ST. BARNABAS HOSPITAL,
a/a/o ISRAEL CABAN;
NEW YORK AND PRESBYTERIAN
HOSPITAL, a/a/o LARA ALLEN,**

Plaintiffs,

- against -

DECISION AND ORDER

Index No: 6689/11

Motion Sequence Nos 001 and 002
Original Return Date: 08-11-11

**FIDUCIARY INSURANCE COMPANY
OF AMERICA,**

Defendant.

-----X

P R E S E N T :
HON. JOEL K. ASARCH,
Justice of the Supreme Court.

The following named papers numbered 1 to 10 were submitted on this Notice of Motion and Notice of Cross-Motion on August 24, 2011:

	<u>Papers numbered</u>
Notice of Motion, Affirmation and Affidavits (2) in Support	1-4
Notice of Cross-Motion, Affirmation and Affidavit in Support	5-7
Reply Affirmation and Affidavits (2) in Further Support	8-10

The motion by plaintiffs, St. Barnabas Hospital a/a/o Israel Caban, and New York and Presbyterian Hospital a/a/o Lara Allen, pursuant to CPLR 3212, for an Order awarding them summary judgment; and the cross-motion by defendant, Fiduciary Insurance Company of America ("FICA"), pursuant to CPLR 3211 and/or 3212, for an Order dismissing the plaintiffs' claims, are decided as follows:

Summary judgment is drastic relief – it denies one party the opportunity to go to trial. Thus, summary judgment should only be granted where there are no triable issues of fact. See *Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]. The focus for the court is on issue finding, not issue determining, *Hantz v. Fishman*, 155 A.D.2d 415 [2nd Dept. 1989]. Where appropriate, summary judgment should be granted by the Court.

Plaintiffs bring this action pursuant to Insurance Law §5106(a) for the alleged failure of the defendant to pay two separate no-fault billings. St. Barnabas Hospital is the assignee for health services rendered to Israel Caban during the period August 19, 2010 through August 20, 2010 arising out of an automobile accident on August 19, 2010. New York and Presbyterian Hospital is the assignee for health services rendered to Lara Allen during the period January 6, 2010 through January 8, 2010 arising out of an automobile accident on December 31, 2009.

For the sake of clarity, this Court will address both claims separately and in turn.

Israel Caban

Israel Caban was involved in a motor vehicle accident on August 19, 2010. He was admitted overnight to St. Barnabas Hospital on that date. On March 3, 2011, plaintiff billed the defendant with a Hospital Facility Form (NF-5) for payment of a hospital bill in the sum of \$7,005.67. A form UB-04 was also attached to the bill (Motion, Ex. 1). The bill was mailed certified mail, return receipt requested and was received by the defendant on March 7, 2011 (*Id.*, Ex. 2).

The defendant issued a denial of claim dated April 25, 2011. The reason for the denial was “fees not in accordance with fee schedules” (*Id.*, Ex. 4). Specifically, defendant denied plaintiff’s claim because the bill was submitted more than 45 days after the services were rendered (11 NYCRR 65-1.1). The denial form also noted that the notice of injuries was provided more than 30 days after

the date of the accident (*Id.*).

Plaintiff contends that the defendant has failed to act in accordance with Insurance Law §5106 which requires timely payment or denial of the requests for no-fault benefits. Plaintiff claims that the defendant's failure to comply with Insurance Law §5106 now precludes the defendant from interposing a defense in this action.

In opposition, and in support of its cross-motion, defendant FICA maintains that it timely and properly denied the applicant's no-fault medical bills because the claims were submitted untimely and no justification for the untimeliness was ever offered by the applicant or their representative. This Court agrees.

By plaintiff's own submissions, it is clear that plaintiff did not submit the claim until well after 45th day from the date of the treatment. Pursuant to 11 NYCRR 65-1.1, claims must be submitted within "45 days after the date [the] services [were] rendered." "[T]he 45 day period for mailing of a written proof of claim . . . begins the day after the services are rendered" (*SZ Med. P.C. v Country-Wide Ins. Co.*, 12 Misc.3d 52 [App. Term 2nd Dept. 2006] quoting NY Ins Dept Informal Op No. 03-06-30 [June 30, 2003]). Thus, the 45 day period in this case commenced on August 21, 2010. Plaintiff did not submit the claim until March 3, 2011, approximately 190 days after the date of the treatment.

While 11 NYCRR 65-1.1 provides that "[t]he . . . time limitations for the submission of proof of claim shall apply unless the eligible injured person [or that person's representative] submits written proof providing clear and reasonable justification for the failure to comply with such time limitation," in this case, plaintiff has failed to proffer such proof.

Further, 11 NYCRR 65-3.3 (e) provides:

When an insurer denies a claim based upon the failure to provide timely written notice of claim or timely submission of proof of claim by the applicant, *such denial must advise the applicant that late notice will be excused where the applicant can provide reasonable justification of the failure to give timely notice.* (Emphasis added.)

Here, the record is clear that the required advisement was communicated to the plaintiff on the denial of claim form itself under the reasons for the denial of the claims.

Accordingly, this Court finds that the defendant has not waived reliance on the 45-day rule as a basis to deny the claim. Therefore, defendant's motion for an Order granting summary judgment dismissing the plaintiff St. Barnabas Hospital a/a/o Israel Caban's claim is **granted** (*St. Vincent's Hosp. & Med. Ctr. v Country Wide Ins. Co.*, 24 AD3d 748, 749 [2nd Dept. 2005] *leave to appeal denied*, 7 NY3d 702 [2006]). Consequently, plaintiff's motion for summary judgment in this regard is **denied**.

Lara Allen

Lara Allen was involved in a motor vehicle accident on December 31, 2009. She received treatment at the New York and Presbyterian Hospital from January 6, 2010 through January 8, 2010.

At issue herein is a bill submitted by the plaintiff on March 18, 2010. Plaintiff billed the defendant a Hospital Facility Form (NF-5) for payment of a hospital bill in the sum of \$15,871.32 of which \$14,611.76 apparently remains unpaid. A form UB-04 and DRG Master Output Report were attached to the bill (Motion, Ex. 5), which were mailed certified mail, return receipt requested, and was received by the defendant on March 22, 2010.

Plaintiff claims that on March 29, 2010, defendant issued a denial of claim in which it denied a *portion* of the claim entitled "Health Services Benefits" in the amount of \$563.71. A closer reading of the denial of claim form attached to plaintiff's motion however clarifies that said denial form was

issued with respect to bill dated February 12, 2010 and received by the defendant on February 17, 2010. By plaintiff's own submissions, at issue herein is a claim submitted by the plaintiff on March 18, 2010. This denial of claim was issued by the defendant on April 1, 2010 (Defendant's Cross Motion, Ex. D). Said denial of claim form denied the entire claim on the grounds that "fees [were] not in accordance with fee schedules." Specifically, the insurance company cited the reason for the denial as the bill was submitted more than 45 days after the services were rendered (*Id.*).

Plaintiff contends that the defendant has failed to act in accordance with Insurance Law §5106 which requires timely payment or denial of the requests for no-fault benefits. Plaintiff claims that the defendant's failure to comply with the Insurance Law §5106 now precludes the defendant from interposing a defense in this action.

In opposition, and in support of its cross-motion, defendant claims that it timely and properly denied the applicant's request for payment for no-fault medical services because the bill, submitted on March 18, 2010, was provided more than 45 days after the services were allegedly rendered. Defendant points to Exhibits "C" and "D" of its cross-motion which consist of the affidavit of Robby Singh, a no-fault claims examiner for FICA, and a denial of claim form dated April 1, 2010, respectively. The denial of claim notes that the entire claim is denied on the grounds that "Fees not in accordance with fee schedules." The denial of claim form elaborates that the bill was submitted more than 45 days after the services were rendered in violation of Regulation No. 68 (11 NYCRR 65-1.1). Essentially, in opposition, defendant again seeks to rely upon the 45 day rule as a basis for denying the applicant's request for the payment of no-fault medical services (Aff. In Supp. Of Cross Motion, ¶18).

As stated above, the 45 day period for mailing of a written proof of claim begins the day after

the services are rendered. Here, the plaintiff submits evidence that it was not until March 18, 2010, that it billed the defendant with a NF-5 Form, approximately 70 days following the date that services were rendered. Plaintiff had until February 24, 2010 to submit it's claim. This it failed to do.

Furthermore, in the absence of any written proof by the plaintiff providing "clear and reasonable justification" for the failure to comply with such time limitation, this Court is precluded from disobeying the time limitations spelled out in 11 NYCRR 65-1.1 (*see also*, 11 NYCRR 65-3.3 [e]).

Accordingly, defendant has not waived reliance on the 45-day rule as a basis to deny the claim. Therefore, defendant's motion for an Order of summary judgment dismissing the causes of action of the plaintiff New York and Presbyterian Hospital a/a/o Lara Allen is also **granted** (*St. Vincent's Hosp. & Med. Ctr. v Country Wide Ins. Co.*, supra). Consequently, plaintiff's motion for summary judgment in this regard is also **denied**.

Accordingly, after due deliberation, it is

ORDERED, that the defendant's cross-motion for summary judgment dismissing the complaint is **granted** and the plaintiffs' motion for summary judgment granting them the relief requested in the complaint is **denied**.

The parties' remaining contentions have been considered by this Court and do not warrant discussion.

All applications not specifically addressed herein are denied.

This shall constitute the Decision and Order of this Court.

Settle Judgment on Notice.

Dated: Mineola, New York
November 7, 2011

ENTER:



JOEL K. ASARCH, J.S.C.

Copies mailed to:
Joseph Henig, Esq.
Attorneys for Plaintiffs

Skenderis & Cornacchia, P.C.
Attorneys for Defendant

ENTERED
NOV 10 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE