

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

2023 NY Slip Op 33002(U)

August 21, 2023

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-719179-19/KI

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

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

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BURKE PHYSICAL THERAPY, P.C. A/A/O
WHEELER, GEORGINA,
Plaintiff(s),

Index No:
CV-719179-19/KI

DECISION AND ORDER

-against-

STATE FARM MUTUAL AUTOMOBILE INS. CO.
PIP/BI CLAIMS,
Defendant(s).

Recitation as required by CPLR § 2219(a) of the
papers considered in review of the motion(s):

Papers
Notice of Motion and Affidavits Annexed 1,2
Answering Affidavits 3
Replying Affidavits
Exhibits
Other

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DEREFIM B. NECKLES, J:

Upon a review of the foregoing cited papers and after oral argument, plaintiff's motion for summary judgment and defendant's cross-motion for summary judgment are decided as follows:

In this no-fault action, defendant, through its letters dated February 19, 2019, requested documentary verification from plaintiff to confirm that plaintiff had standing to receive payment of assigned no-fault benefits and that it operated in compliance with New York State licensing requirements. Pursuant to 11 NYCRR 65-3.5(o), "[a]n applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply." In response, plaintiff, through its letters dated October 16, 2018, October 26, 2018, November 29, 2018, December 7, 2018, December 28, 2018, February 26, 2019, April 16, 2019 and August 27, 2019, objects to defendant's verification request on both procedural and substantive grounds, citing case law and no-fault statutes in support of its arguments. Plaintiff's objection letters raise a triable issue of fact regarding the reasonableness of plaintiff's justification for refusing to provide the documents sought (*see Burke Physical Therapy, PC v. State Farm Mut. Auto. Ins. Co.*, 72 Misc 3d 1206 [A] [Civ Ct 2021, Kings County]; see also

State Farm Mut. Auto. Ins. Co. v Burke Physical Therapy, P.C., 2022 NY Slip Op 30580[U], *10 [Sup Ct, Nassau County 2022]; *Arthur Ave. Med. Services, PC v GEICO Ins. Co.*, 72 Misc 3d 342, 351 [Civ Ct, Kings County 2021] [“The reasonableness of [the] additional verification request remains an issue of fact for trial”). As such, defendant has failed to demonstrate its entitlement to summary judgment on its defense on outstanding verifications.

However, defendant has established that the two bills in the amount of \$278.11 and \$208.30 (DOS December 26, 2018) were previously paid, with interest (defendant’s exhibit “D”). In opposition, plaintiff failed to address defendant’s showing that those two bills have been fully paid. As such, the claims as to those two bills are dismissed.

Based on the foregoing, defendant’s motion for summary judgment is granted to the extent that it established timely mailing of its verification requests as well as its entitlement of the dismissal of the claims relating to the two bills in the amount of \$289.11 and \$208.30, DOS December 26, 2018. Plaintiff’s cross-motion for summary judgment is granted to the extent that timely receipt of the bill has been established. Defendant’s defense on outstanding verification remains an issue of fact for trial.

This constitutes the decision and order of the court.

Date: August 20, 2023
Brooklyn, New York



Hon. Derefim B. Neckles
Civil Court, Kings County