

Taiqi Acupuncture Wellness, P.C v NY City Tr. Auth.

2025 NY Slip Op 30494(U)

January 22, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-733478-19/KI

Judge: Sandra Elena Roper

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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 41

X

TAIQI ACUPUNCTURE WELNESS, P.C,
A/A/O MOHAN, BHANDAI,

Plaintiff,

-against-

NY CITY TRANSIT AUTHORITY,

Defendant.

X

Index No. CV-733478-19/KI
Motion Cal. # 39 Motion Seq. # 1-2

DECISION AND ORDER

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

Papers:

- P’s Motion for Summary Judgment 1-2.
- D’s Cross Motion for Summary Judgment 3-4
- P’s Opposition & Reply.....5
- D’s Reply.....6

Upon a review of the foregoing cited papers, Plaintiff’s Motion for Summary Judgment and Defendant’s Cross-Motion for Summary Judgment after oral arguments are decided as follows:

Plaintiff’s Motion is GRANTED TO THE EXTENT pursuant to CPLR 3212(g) that Plaintiff established its prima facie case in that Plaintiff established timely and proper mailing of its bills to Defendant and that said bills were received by Defendant and were not paid or denied by Defendant. Defendant’s Cross-Motion is DENIED.

The affidavit of Defendant’s Director of SIU, No-Fault, and Workers’ Compensation for New York City Transit Authority, James Manning, asserted that, based on his review of the file, Defendant could not verify any accident that could have involved Plaintiff’s assignor on August 21, 2017, and there was no such accident. Defendant’s motion fails to provide any documentation to substantiate or corroborate affiant’s statements. “It is well settled that the proponent of a summary judgment motion must present evidence in admissible form which eliminates any triable issues of fact.” DGA Corp. v. Porter, 297 A.D.2d 701, 702 (2d Dep’t, 2002), *citing to Zuckerman v. New York*, 49 N.Y.2d 557, 562 (1980). Stated another way, “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.” Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986) (internal citations omitted). Here, Defendant failed to make its prima facie case for judgement as a matter of law. Thus, this action is to proceed to trial solely on the affirmative defense that there was no coverage by Defendant for Plaintiff’s assignor.

This constitutes the Decision and Order of this Court.

Counsel for Plaintiff – Printed Name and Initials: *Oleg Rybak, Esq.*

Counsel for Defendant – Printed Name and Initials: Anastasiya Nabatova

Date: 1/22/25
Brooklyn, New York

Hon. Sandra Elena Roper, JCC

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