

**Summer P.T., P.C. v MVAIC**

2025 NY Slip Op 30864(U)

March 7, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-721643-20/KI

Judge: Sandra E. 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  
SUMMER P.T., P.C.,  
A/A/O CRUZ, ANIBAL,

Index No. CV-721643-20/KI  
Cal. # 29 -30 Motion Seq. # 1 - 2

**DECISION AND ORDER**

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

**Papers**

Notice of Motion -----1-2

Notice of Cross-Motion ----- 3-4

Affirmation in Opposition ----- 5

*Plaintiff,*

-against-

MVAIC,

*Defendant.*

**ENTERED - Kings Civil Court**  
**3/13/2025, 10:44:09 AM**

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

Defendant’s Motion for Summary Judgment is DENIED. “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). Indeed, in considering Defendant’s motion, the Court must view the evidence *in the light most favorable to Plaintiff*. As is well-established, “[i]n determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party.” Green v. Quincy Amusements, Inc., 108 A.D.3d 591, 592 (2d Dep’t, 2013). *See also Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012). Here, the Defendant failed to affirmatively establish where it obtained the address for the Assignor, as the affidavit of Tarik Pollins is silent as to how the request for a verification, for example, requesting a copy of the Assignor’s Notice of Intent, was supposedly mailed to the Assignor’s correct address as the bills by the Plaintiff were mailed after Defendant mailed the alleged qualification letter.

Plaintiff’s Motion is GRANTED TO THE EXTENT that Plaintiff established its prima facia case for all purposes in this action pursuant to CPLR 3212(g).

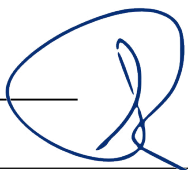
The action is to proceed to trial solely on the affirmative defense of whether there is coverage for this accident with MVAIC specifically the issue of Defendant’s prima facia case, the mailing of the qualification letter to the Assignor and the alleged lack of receipt of Notice of Intent.

This constitutes the Decision and Order of the Court.

Counsel for Plaintiff – Oleg Rybak/OR

Counsel for Defendant – Andrew Staub/AS

Date: March 7, 2025  
Brooklyn, New York

  
Honorable Sandra E. Roper  
Judge, Civil Court, Kings County