

Easy Care Med. Servs., P.C. v Pharmacists Mut. Ins.

2025 NY Slip Op 35242(U)

July 24, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. 700583/23

Judge: Jill R. Epstein

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

EASY CARE MEDICAL SERVICES, P.C.,
A/A/O BENITEZ, SIRA

Index No. 700583/23
Motion Cal. #25 Motion Seq. #1

Plaintiff(s),

DECISION AND ORDER

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

-against-

Papers

PHARMACISTS MUTUAL INS.
Defendant(s).

D’s motion for summary judgment.....	1
P’s opposition.....	2
D’s Reply.....	3

Upon the foregoing cited papers, and after oral argument, the Decision/Order on Defendant’s motion to dismiss and Plaintiff’s opposition as follows:

Defendant’s motion to dismiss is DENIED.

Plaintiff establishes its prima facie case of mailing of the bills to Defendant.

Initially, by stipulation dated March 13, 2023 defendant “*waives ALL jurisdictional defenses.*”

Thus, Defendant’ may not now claim that this Court is not the proper jurisdiction to hear the matter. In fact, “where the availability of Workers’ Compensation hinges upon the resolution of questions of fact or upon mixed questions of fact and law, the plaintiff may not choose the courts as the forum for the resolution of such questions.” O’Rourke v. Long, 359 N.E.2d 1347 (1976); Weber v. State of New York, 104 Misc.2d 947, 429 N.Y.S.2d 380 (Court of Claims 1980). On the other hand, the presence or absence of insurance coverage for a particular individual is a question of law to which the court retains jurisdiction. *Id. at 225*; Jing Huo Lac v. American Tr. Ins. Co., 19 Misc. 3d 1146(A); 867 N.Y.S.2d 17 (Civ. Ct. Richmond Co. 2208).

In a suit for first-party no-fault benefits, there is a presumption of coverage in favor of the Plaintiff, and the Defendant has the burden of proving a lack of coverage. *See generally Central Gen. Hosp. v. Chubb Group of Ins. Cos.*, 90 N.Y.2d 195 (1997). *See also Mount Sinai Hosp. v. Triboro Coach Inc.*, 263 A.D.2d 11, 20 (2d Dep’t, 1999); Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co., 17 Misc.3d 97, 99 (App. Term, 1st Dep’t, 2007). Thus, Plaintiff does not have the burden of demonstrating the presence of coverage, but rather it remains a defense to be affirmatively proven by Defendant.

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). It is equally well established that the motion should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility.” Scott v. Long Island Power Auth., 294 A.D.2d 348 (2d Dep’t, 2002).

Defendant has failed to issue any timely denials asserting a workers’ compensation defense. It is well established that workers’ compensation is not a defense to payment, but rather a matter of priority. *See* Westchester Med. Ctr. v. Lincoln Gen. Ins. Co., 60 AD3d 1045 (2d Dep’t 2009). Moreover, Defendant’s exhibits and purported evidence are inadmissible, as they are unsupported by affidavits, lack proper foundation, and have not been authenticated in accordance with evidentiary standards.

Accordingly, this matter shall proceed to trial.

This constitutes the decision and order of the Court.

Counsel for Plaintiff – Printed Name and Initials: The Rybak Firm, PLLC

Counsel for Defendant – Printed Name and Initials:

Date: July 24, 2025
Brooklyn, New York


Hon. JILL R. EPSTEIN, JDC - etd
Civil Court Kings County

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