Veraso Med. Supply Corp. v Greenwich Ins. Co.
2026 NY Slip Op 31250(U)
March 31, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. CV-062709-15/KI
Judge: Rena Malik
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART 40

Index No. CV-062709-15/KI
Motion Seq. Nos. 004

VERASO MEDICAL SUPPLY CORP a/a/o ANA MARTINEZ,

Plaintiff,

- against -

GREENWICH INSURANCE COMPANY,

Defendant(s).

DECISION & ORDER

Recitation, as required by CPLR 2219 (a), of the papers considered on this motion:

Papers	NYSCEF Doc Nos
Notice of Motion, Affirmation in Support & Exhibits A – F, Amended Notice of Motion	6-15
Memorandum of Law in Opposition	16

RENA MALIK, J.

Ana Martinez (Martinez), plaintiff-assignor, was involved in a motor vehicle accident on February 7, 2014 and sought medical treatment from Veraso Medical Supply Corp. (plaintiff). Plaintiff commenced this action against Greenwich Insurance Company of America seeking to recover $7,832.99 representing the balance of alleged first-party no-fault benefits for medical services provided to plaintiff-assignor.

Upon the foregoing papers, defendant moves pursuant to CPLR 3212 (b) and 3212 (g) for summary judgment seeking to dismiss the complaint or limit the issues of fact for trial on the grounds that Martinez was in the course of her employment at the time of the accident and worker's compensation insurance should cover her medical benefits, and not no-fault insurance.

The movant on a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case (see Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). CPLR 3212 provides that a summary judgment motion must be supported by an affidavit of a person with knowledge of the facts, as well as other admissible evidence (see JMD Holding Corp. v Congress Fin. Corp., 4 NY3d 373, 384-386 [2005]).

Once such a showing is made, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp.,68 NY2d 320, 324 [1986], citing Zuckerman, 49 NY2d at 562).

The no fault insurance scheme is designed to provide a quick resolution of the reimbursement of claims, avoid litigation, and incentivize an insurer to seek verification of a claim, deny it, or pay it in short order (see Viviane Etienne Med. Care, P.C. v Country Wide Ins. Co., 25 NY3d 498, 506-07 [2015]; Matter of Med. Socy. of State v Serio, 100 NY2d 854, 860 [2003]). The procedure to verify, deny, or pay claims is codified and governed by Insurance Law 5106 (a). "[A]n insurer must either pay or deny a claim for motor vehicle no-fault benefits, in whole or in part, within 30 days after an applicant's proof of claim is received" (Infinity Health Prods., Ltd. v Eveready Ins. Co., 67 AD3d 862, 864 [2d Dept 2009]).

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Defendant seeks summary judgment on the basis that Martinez was in the course of her employment as a bus driver at the time the accident occurred, and accordingly her medical expenses should be covered by workers' compensation rather than no-fault insurance. In support, defendant submits a police accident report (see exhibit E) and an affidavit of Vincent Giardello, Safety Manager of Logan Bus Company (see exhibit F).

"A conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not establish the proponent's prima facie burden" (JMD Holding Corp. v Congress Fin. Corp., 4 NY3d 373, 384-85 [2005]). Here, the "Safety Director" of a bus company did not adequately explained how he would have the requisite personal knowledge to attest to the fact(s) that Martinez was employed on the date of the accident; that she was driving their bus at the time of the accident; that the accident occurred in Brooklyn;[1] and that her benefits would be covered under a workers compensation policy. Mr. Giardello's affidavit, sworn to in 2019 (five years after the 2014 accident), states that his knowledge arises out of his review of the Logan Bus Company business records (see id. at para 3) but does not annex copies of the business records upon which he relies in arriving at his conclusions. "Evidence as to the content of business records is admissible only where the records themselves are introduced; without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay" (Countrywide Home Loans Servicing, L.P. v Vorobyov, 188 AD3d 803, 805 [2d Dept 2020]). Indeed, such failure to attach, e.g., a copy of the insurance policy renders defendant's prima facie showing as insufficient on this defense (see Active Care Med. Supply Corp. v Hartford Ins. Co., 51 Misc 3d 1222[A], 2016 NY Slip Op 50769[U] [Civ Ct, Kings County 2016] [denying defendant's motion that the proper insurer is workers' compensation where "defendant fails to attach the insurance policy, rendering its employee's statements as to the alleged contents of the policy hearsay"]).

Although defendant submitted a copy of the police accident report, it is not in admissible form as it is not certified and/or not accompanied by an affidavit introducing it (see CPLR 4518 [c], [a]).

Even if the police report were in inadmissible form, the contents therein (to the extent not otherwise barred as hearsay) do not conclusively establish a lack of coverage as a matter of law. Notably it conflicts with the Giardiello affidavit in stating that the accident occurred in the Bronx and that the owner of the Martinez vehicle is "Grandpas Bus Co Inc," which is nowhere explained in defendant's moving papers. Summary judgment should not be granted where defendants' own evidence is conflicting (see e.g., Mazzio v Highland Homeowners Assn. & Condos, 63 AD3d 1015 [2d Dept 2009]).

Assuming, arguendo, defendant sufficiently demonstrated that workers compensation coverage exists and applies to the subject accident, the motion would still be denied. When an applicant for no-fault benefits is entitled to workers' compensation benefits due to the same accident, "the workers' compensation carrier shall be the sole source of reimbursement for medical expenses" (11 NYCRR 65-3.16 [9]). Workers compensation is considered as "primary" when compared to no-fault and "Insurance Law § 5102 (b) (2) expressly provides that workers' compensation benefits

[1] The street names of the alleged accident location is in the Bronx, not Brooklyn.

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serve as an offset against first-party benefits payable under no-fault as compensation for 'basic economic loss'" (Arvatz v Empire Mut. Ins. Co., 171 AD2d 262, 268 [1st Dept 1991]).

Consequently, "defendant's possible entitlement to offset any no-fault benefits it pays by any recovery pursuant to a Workers' Compensation claim does not constitute a defense of lack of coverage" (Westchester Med. Ctr. v Lincoln Gen. Ins. Co., 60 AD3d 1045, 1046 [2d Dept 2009]). In this regard, such a defense is subject to preclusion if not timely denied (see id.; Y.A.M. Med. Supply, Inc. v Glob. Liberty Ins. Co. of NY, 65 Misc 3d 147[A], 2019 NY Slip Op 51801[U] [App Term, 2d, 11th & 13th Jud Dists 2019] ["The defense that the assignor is eligible for workers' compensation benefits is subject to preclusion"]).

Here, defendant does not assert that it paid or denied plaintiff's claim within 30 days after the claim was received (see generally Infinity, 67 AD3d at 864) and therefore fails to meet its burden entitling it to judgment as a matter of law (see, e.g., Lenox Hill Radiology and MIA, P.C. v Glob. Liberty Ins. Co. of New York, 24 Misc 3d 1225[A], 2009 NY Slip Op 51620[U] [Civ Ct, Richmond County 2009] ["Having failed to raise the defense that claimant is eligible for workers compensation or that workers compensation is primary in a timely denial, plaintiff is entitled to partial summary judgment"]).

Accordingly, the Court finds defendant failed to submit sufficient evidence in admissible form to meet its prima facie burden entitling it to judgment as a matter of law and the "[f]ailure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (Winegrad, 64 NY2d at 853).

It is hereby ORDERED that defendant's motion for summary judgment is denied.

This constitutes the decision and order of the Court.

March 31, 2026
DATE

ENTER:

RENA MALIK
Judge of the Civil Court

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
MOTION SEQ. NO.: 004		**GRANTED**	X **DENIED**		**GRANTED IN PART**		**OTHER**
CHECK IF APPROPRIATE:		SETTLE ORDER			SUBMIT ORDER		STAY CASE
		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

NOTES

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