

Burke Physical Therapy, P.C. v State Farm Fire & Cas. Co.
2026 NY Slip Op 32093(U)
June 26, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. CV-753549-21/KI
Judge: Sherveal Mimes
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Civil Court of the City of New York
County of Kings
Part 41

Index # CV-753549-21/KI



BURKE PHYSICAL THERAPY, P.C., AAO HENLEY,
MONASIA

Plaintiff(s)

-against-

STATE FARM FIRE AND CASUALTY CO. PIP/BI
CLAIMS,

Defendant(s)

Decision / Order

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	1-2; 3-4
Answering Affidavits/ Affirmations	___5___
Reply Affidavits/ Affirmations	_____
Memoranda of Law	_____
Other	_____

Defendant, State Farm Fire and Casualty Co., moves by Notice of Motion (Mot. Seq.1) for an order dismissing plaintiff's complaint pursuant to CPLR 3212 (a) and (b). Plaintiff, Burke Physical Therapy, P.C., cross moves (Mot. Seq. 2) for summary judgment.

Plaintiff commenced this matter by the filing of a Summons and Complaint on November 12, 2021, to recover first-party no fault benefits. Issued was joined upon defendant's interposition of a Verified Answer together with discovery demands. In its complaint, plaintiff alleges that it provided medically necessary health services to its assignor, Monasia Henley, on February 12, 2019, for injuries that allegedly resulted from a motor vehicle accident that occurred on July 12, 2018. Plaintiff asserts that it timely and properly remitted two claims totaling \$649.19, which defendant failed to pay or deny within the statutory period.

Defendant explains that the owner of plaintiff-medical provider, John Nasrinpay, appeared for an examination under oath on September 14, 2018, in connection with numerous claims unrelated to the instant claims. Defendant attaches the affidavit of its investigator, Doug

Babin, who outlines numerous issues that resulted from the 2018 EUO that called into question plaintiff's eligibility to collect no-fault benefits. In fact, Mr. Babin states that the responses provided by plaintiff's owner at the 2018 EUO raised more questions concerning the entity's eligibility to obtain benefits.

Defendant's request for additional verification in the instant matter derive from the 2018 EUO. Defendant contends that it timely requested additional verification (documents) by letters dated April 5, 2019, and May 9, 2019. In its letters, defendant requested *inter alia* documents, plaintiff's lease agreements for various locations, payments to/from third-parties, bank records, federal tax returns, and ledgers. Defendant contends that it denied plaintiff's claims on August 8, 2019, due to plaintiff's failure to provide the requested documents, or written proof of its reasonable justification for failing to do so within 120 days.

Plaintiff opposes the motion and requests (1) that the court grant summary judgment in its favor and (2) dismiss defendant's defenses under CPLR 3211 (b). Plaintiff also challenges the EUO transcript that defendant submitted in support of its motion. Plaintiff contends that the transcript is inadmissible because said transcript is unsigned. Plaintiff contends that the defendant continually requests additional verification in response to claims that it receives from plaintiff based upon the 2018 EUO, then subsequently issues a denial based on the 120-day rule. Plaintiff points out that defendant's requests for additional verification are discovery demands couched as verification. Plaintiff continues that said verification does not seek to verify the instant claims but rather, the defendant is seeking information that relates to *Mallela* for which the defendant has no corresponding defense in its answer. Plaintiff also objects to the verification requests based upon its contention that the requests are duplicative and made solely to delay payment.

To prevail on summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 508 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]). “The failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d at 853 [1985]).

A no-fault provider establishes its prima facie entitlement to summary judgment by proof of the submission of its claim form to the defendant, proof of the fact and the amount of the loss sustained, and proof that the defendant failed to pay or deny the claim within the requisite 30-day period, or defendant issued a denial of claim that was conclusory, vague or without merit as a matter of law” (*Ave T MPC Corp. v. Auto One Ins. Co.*, 32 Misc3d 128 [A] [App. Term, 2d Dept., 2d, 11th & 13th Jud. Dists. 2011]). Once plaintiff meets its prima facie burden, the burden shifts to defendant to raise a triable issue fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]).

Here, the court finds that the plaintiff established by proof in admissible form that two statutory claim forms, with corresponding assignments of benefit, were timely and properly mailed to the defendant. Defendant does not dispute receipt of the claims but rather, it disputes that plaintiff is entitled to payment due to outstanding requests for additional verification. Based on this defense, the defendant has the burden of establishing that “plaintiff failed to comply with its additional verification requests” within the statutory period (*Burke Physical Therapy, PC v State Farm Mutual Automobile Ins. Co.*, 72 Misc3d 1026(A) [Civil Ct, Kings County, June 30, 2021] citing *TAM Medical Supply Corp v Tri State Consumers Ins. Co.*, 57 Misc3d 133[A][App

Term, 2d Dept., 2d, 11th, & 13th Jud. Dists. 2017] and *Compas Med., P.C. Farm Family Cas. Ins. Co.*, 38 Misc3d 142[A] [App Term, 2d Dept., 11th & 13th Jud. Dists. 2016]).

Defendant has not established that the plaintiff failed to provide the requested documents or object in writing, because plaintiff provided exhibits that include a written objection letter. The court notes that plaintiff also provided information in response to the defendant's discovery demands that were included with its answer. In any event, defendant's contention that plaintiff's objection letter was not sent during the verification stage only illuminates a material issue that its counsel is unable to eliminate by argument or by pointing the court to Exhibits A-C annexed to its motion. The propriety of the defendant's post-EUO requests for additional verification must be addressed to determine whether its time to pay or deny the subject claims were tolled and if so, the defendant may rely on its outstanding verification defense.

Regarding that branch of plaintiff's cross motion to dismiss defendant's affirmative defenses, the court has liberally construed the defendant's answer in its favor and has given defendant the benefit of every reasonable inference as to those defenses (*Greco v Christoffersen*, 70 AD3d 769, 771 [2d Dept 2010] citing *Fireman's Fund Ins. Co. v Farrell*, 57 AD3d 721 [2d Sept 2008]). Under that standard, the court finds that plaintiff failed to demonstrate the defenses are without merit as a matter of law.

Based upon the foregoing, it is hereby

ORDERED, that Defendant's motion (Motion Seq. 1) is GRANTED TO THE EXTENT that defendant established timely mailing of its post-EUO verification requests, and it is further

ORDERED, that Plaintiff's cross motion (Motion Seq. 2) is GRANTED TO THE EXTENT that plaintiff established timely and proper mailing of its statutory claim forms and defendant receipt of same, and it is further

ORDERED, that the parties' remaining requests for relief are denied.

This constitutes the decision and order of the court.

June 26, 2026 DATE		8m HON. SHERVEAL MIMES, JCC						
CHECK ONE:	☐	CASE DISPOSED	☐	NON-FINAL DISPOSITION				
MOTION SEQ. # 1 & 2	☐	GRANTED	☐	DENIED	☒	GRANTED IN PART	☐	OTHER
CHECK IF APPROPRIATE:	☐	SETTLE ORDER	☐	SUBMIT ORDER	☐	STAY CASE		
NOTES	☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT	☐	REFERENCE		
Both motions granted to the extent								

ENTERED - Kings Civil Court

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