

<b>Active Care Med. Supply, Corp. v MVAIC</b>
2022 NY Slip Op 34444(U)
December 19, 2022
Civil Court of the City of New York, Kings County
Docket Number: Index No. CV-719370-16/KI
Judge: Rachel E. Freier
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: PART 75

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ACTIVE CARE MEDICAL SUPPLY, CORP., as Assignee  
Of LACEN, TIFFANY,

Plaintiff,

-against-

MVAIC,

Defendant.

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**DECISION AND ORDER**

Index No: CV-719370-16/KI

**RACHEL E. FREIER, J.:**

On October 26, 2022, the plaintiff, Active Care Medical Supply, Corp. (“Plaintiff”), and the defendant, MVAIC (“Defendant”), (collectively, “Parties”) appeared by counsel before the Court for a bench trial. Following the trial, the Court finds in favor of **PLAINTIFF**.

**RELEVANT FACTS AND PROCEDURAL HISTORY**

Plaintiff commenced the action by filing a Summons and Complaint with the Court on or about July 1, 2016, alleging unpaid No-Fault benefits in the amount of \$5,495.94, with interest and costs. Defendant joined issue by filing an Answer.

On May 16, 2018, the Honorable Odessa Kennedy issued a decision on the motion and cross-motion for summary judgment in the instant case, finding that Plaintiff had established timely mailing of the bills and that Defendant had established their prima facie case. The Honorable Kennedy’s decision held that the question remaining for trial was “whether Defendant’s verification requests remain outstanding.”

The Parties appeared by counsel before the Court via Microsoft Teams on October 26, 2022, for a bench trial.

## DISCUSSION

At the outset of the trial, the Parties stipulated that, per the Honorable Kennedy's Order of May 16, 2018, Plaintiff established their *prima facie* case of submitting their bills timely. The parties argued, though, at trial and in their post-trial memoranda, as to the meaning of the Order's finding that, "Defendant has established its *prima facie* case." In support of their argument, Plaintiff cited to *Is. Life Chiropractic, P.C. v Travelers Ins. Co.*, 64 Misc 3d 143(A) [App Term 2019], on the proposition that, following similar language in a motion decision, the Second Department required that a trial begin with the burden on the Defendant to prove the mailing of the verification requests.

The Court disagreed with Plaintiff's interpretation. The case in question states,

As there was a finding for all purposes in this action that defendant had timely mailed verification requests to plaintiff, defendant did not have to prove this element of its defense at trial.... Since the motion court had previously found that a trial was warranted, it remained defendant's initial burden to present testimony to demonstrate that it had not received the requested verification, before the burden shifted to plaintiff to prove that it had provided responses."

(*Id.*) Here, the underlying motion decision regarding an outstanding verification request defense found that "Defendant has established its *prima facie* case." As Defendant did not issue any denials in the case, the Court could not have found that Defendant established its *prima facie* case by issuing timely denials. Defendant, therefore, argued that the Court must have intended that Defendant established timely mailing of its verification requests. Although Plaintiff asked the Court to find another interpretation, they do not submit any for the Court to consider and the Court does not see another means of interpreting the motion decision.

Therefore, the Court agrees with Defendant that it had, on motion practice, established timely mailing of its verification requests and accordingly, proceeded to trial at the juncture where Defendant was required to prove it had not received any verification responses.

At trial, however, Defendant established that, after receiving the four claims in question, they issued two sets of requests for further information – one to establish the assignor as qualified to receive No-Fault benefits through Defendant (“Qualifying Verification Request”), and the second to request further information regarding the wholesale invoice and payment, a W9, and all notes from the prescribing physician (“Treatment Verification Request”). The Qualifying Verification Requests were mailed within fifteen (15) business days of receipt of the claims and were therefore timely. The Treatment Verification Requests, mailed months after the claims were received, were not timely.

In *New York Hosp. Med. Ctr. of Queens v Motor Veh. Acc. Indem. Corp.*, the Second Department “reject[ed] the defendant's contention that the 30–day time requirement contained in 11 NYCRR 65.15(g)(3) does not apply to it until after it has “qualified” an injured party” (12 AD3d 429, 430 [2d Dept 2004]). Furthermore, and as noted by the Court in that case, the Motor Vehicle Accident Indemnification Corporation “shall have only those rights and obligations which are applicable to an insurer subject to article fifty-one of this chapter” (Insurance Law § 5221). This includes the obligation to request any additional verification within fifteen (15) business days of receipt of a claim (11 NYCRR 65-3.5).

As with the thirty (30) day time limit to pay or deny a claim, this Court finds that the requirement to request additional verification within fifteen (15) days is not tolled until after Defendant has found an injured party qualified.


Accordingly, the requests for further information which were timely – as found by the Honorable Kennedy in the decision on the motions for summary judgment – would be the Qualifying Verification Requests. The Treatment Verification Requests were untimely.

Per the testimony of Cheryl Story, Defendant’s No-Fault Litigation Examiner, the Treatment Verification Requests would only have been sent once the Qualifying Verification Requests were responded to and, in fact, note a qualifying date of July 10, 2012. Defendant did not testify that responses were not received to the Qualifying Verification Requests – that is, the timely requests.

Accordingly, Defendant failed to establish that responses were outstanding to a timely verification request. The Court, therefore, finds in favor of **PLAINTIFF** in the amount of \$5,495.94, with statutory interest, costs, and attorney’s fees.

This constitutes the Decision and Order of the Court.

Dated: December 19, 2022  
Kings County Civil Court

  
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RACHEL E. FREIER, J.