

**Motor Veh. Acc. Indem. Corp. v Bader & Yakaitis
LLP**

2020 NY Slip Op 32222(U)

July 7, 2020

Supreme Court, New York County

Docket Number: 450314/2019

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. GERALD LEBOVITS</u>	PART	IAS MOTION 7EFM
	<i>Justice</i>		
-----X			
	MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,	INDEX NO.	<u>450314/2019</u>
		MOTION DATE	<u>04/01/2020</u>
	Plaintiff,	MOTION SEQ. NO.	<u>001</u>

- v -

BADER & YAKAITIS LLP, JEFFREY BADER, DEVINA POPE, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES HUMAN RESOURCES ADMINISTRATION, OFFICE OF CHILD SUPPORT, and INVESTIGATION, REVENUE AND ENFORCEMENT ADMINISTRATION,

DECISION + ORDER ON MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 49, 51, 52, 53

were read on this motion for SUMMARY JUDGMENT.

Marschhausen & Fitzpatrick, P.C., Hicksville, NY (Kevin P. Fitzpatrick of counsel), for plaintiff.
Bader & Yakaitis LLP., New York, NY (Jesse M. Young of counsel), for defendant Bader & Yakaitis LLP.
New York City Department of Social Services, New York, NY (Elizabeth Haynes of counsel), for interpleaded defendant New York City Department of Social Services.

Gerald Lebovits, J.:

This motion concerns whether defendant Bader & Yakaitis LLP (Bader), a law firm, and defendant Devina Pope are personally liable to repay plaintiff Motor Vehicle Accident Indemnification Corporation’s (MVAIC’s) statutory lien.

BACKGROUND

Pope sustained personal injuries on March 25, 2013, as the result of an automobile collision with non-party Ben Haidara. At the time of the collision, Haidara was insured by Unique Insurance Company, which was not authorized to do business in New York. (See NYSCEF Nos. 15-16.) Haidara was therefore a “non-covered person” under Articles 51 and 52 of the Insurance Law. Pope, as a covered person, was entitled to receive no-fault benefits from plaintiff. Pope accordingly filed for and received \$12,124.03 in no-fault benefits from plaintiff for her medical treatment.

Pope retained Bader to sue Haidara for Pope's injuries. Bader brought an action against Haidara in Supreme Court, New York County (Index No. 157479/2013). The action settled for \$40,000—without notice to plaintiff. Haidara deposited those funds in Bader's bank account. (*See* NYSCEF No. 15.)

Plaintiff contends that after issuing Pope \$12,124.03 in no-fault benefits, it possessed a statutory lien under Insurance Law § 5104 (b) on "any recovery" Pope obtained in the action against Haidara. (*See* NYSCEF No. 11 at 3.) Plaintiff brought this action against Bader and Pope, asserting claims for (i) breach of fiduciary and legal duty owed by Bader under Insurance Law § 5104 (b); and (ii) breach of Pope's statutory and legal duty to repay plaintiff's lien.

Two agencies within the New York City Department of Social Services, the Office of Child Support Services (OCSS) and the Investigation, Revenue and Enforcement Administration (IREA), also claimed liens over the settlement funds. OCSS claimed a lien of \$43,228.27 for unpaid child support. IREA claimed a \$1,495.60 Medicaid lien. Bader itself, as Pope's attorney, held a charging lien for \$15,004 over the settlement funds under Judiciary Law § 475.

Plaintiff, Bader, OCSS, and IREA each contend that their lien is superior to the others. Bader interpleaded the two City agencies to resolve the various conflicting claims over the settlement funds (which it has maintained in an escrow account). (*See* NYSCEF No. 28 at 2.)

Plaintiff now moves for summary judgment against Bader and Pope under CPLR 3212. Plaintiff seeks (i) damages totaling \$12,124.03, plus interest from June 12, 2018 (the date of settlement of the third-party action); and (ii) 22% in legal fees on the gross recovery under State Finance Law §18, totaling \$2,667.29.

DISCUSSION

I. Plaintiff's Motion for Summary Judgment

A movant on summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. (*Pullman v. Silverman*, 28 NY3d 1060, 1062 [2016].) The burden then shifts to the motion's opponent "to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Sumitomo Mitsui Banking Corp. v Credit Suisse*, 89 AD3d 561, 563 [1st Dept 2011].)

It is undisputed that that plaintiff has a statutory lien for \$12,124.03 under Insurance Law § 5104 (b). Pope expressly acknowledged plaintiff's lien in the settlement papers and promised to satisfy it. (*See* NYSCEF No. 15 at 2.) And under §§ 1.15 (c) (1) and (c) (4) of the Rules of Professional Conduct, Bader, as Pope's attorney, was required to notify plaintiff of the settlement and to promptly pay plaintiff's lien. It is undisputed, though, that Bader and Pope settled without plaintiff's knowledge or consent. This court agrees with plaintiff's contention that it is entitled to judgment on liability against Bader and Pope as a matter of law.

Plaintiff also contends that it is entitled to 22% in legal fees on the \$12,124.03 in outstanding debt under State Finance Law § 18. (*See* NYSCEF 11 at 7.) This court disagrees. This statute provides that a debtor who owes money to a state agency and fails to make payment of the debt within 90 days of receipt of notice that the debt is owed is liable for “an additional collection fee charge to cover the cost of processing, handling and collecting such debt, not to exceed twenty-two percent of the outstanding debt.” (State Finance Law § 18 [5].) Here, plaintiff does not introduce evidence establishing that either Bader or Pope received a billing invoice or notice that might start the 90-day statutory clock running. Plaintiff has not met its prima facie burden at summary judgment.

II. Bader’s Cross-Motion for Discharge under CPLR 1006 (f)

Bader and Pope cross-move under CPLR 1006 (f). They seek (i) an order permitting Bader to deduct its charging lien from the settlement funds (leaving \$24,996), and then either pay those remaining funds into court, deliver the funds to a person designated by the court, or to retain the funds to the credit of the action; (2) discharging Bader and Pope from liability to any party; and (3) dismissing the cross-claims against Bader and Pope.

For this court to grant relief under CPLR 1006 (f), Bader must be a mere stakeholder—a holder of funds who is “exposed to multiple liability as the result of adverse claims” on those funds. (CPLR 1006 [a].) Plaintiff argues that Bader is not a mere stakeholder. This court agrees.

Bader’s failure promptly to notify plaintiff of the settlement, repay the lien, or commence an interpleader action under CPLR 1006 exposed Bader and Pope to personal liability to plaintiff. (*See* Disciplinary Rule 9-102 [c] [1] [“A lawyer shall promptly notify a . . . third person of the receipt of funds, securities, or other properties in which the client or third person has an interest.”].) When an independent claim exists against the holder of the funds at issue, the holder is not a mere stakeholder entitled to relief under CPLR 1006. (*See Inovlotska v Greenpoint Bank*, 8 AD3d 623, 624-625 [2d Dept 2004] [“Greenpoint [Bank] was a named defendant against whom the plaintiff asserted independent liability, and as such, was not a mere stakeholder, notwithstanding the fact that bank claimed no interest in the disputed funds. . . .”].)

Bader contends, however, that the delay in payment of the settlement funds resulted simply from doubt over which parties’ lien should be repaid from those funds. (*See* NYSCEF No. 28 at 3.) Each competing claim, though, must rest on a reasonable basis. (*See Federal Ins. Co. v Ryder Truck Rental, Inc.*, 236 AD2d 229 [1st Dept 1997]; *Nelson v Cross & Brown Co.*, 9 AD2d 140, 144 [1st Dept 1959].) Here, the relevant law should have demonstrated to Bader’s satisfaction that plaintiff’s statutory lien attached to the settlement funds after Bader’s charging lien, but before OCSS’s and IREA’s liens. (*See Daniels v Monroe County Child Support Collection Unit*, 196 Misc 2d 595, 597 [Sup Ct, Monroe County 2003] [holding that statutory liens take precedence over personal liens], *aff’d* 11 AD3d 944 [4th Dept 2004]; *Lamonte v Shapiro*, 44 Misc 2d 643, 645 [Sup Ct, Bronx Cnty. 1964] [holding that a statutory lien has priority over a welfare lien].) Statutory liens take precedence over other liens if the parties have already had the opportunity to seize payment. (*Daniels*, 196 Misc 2d at 597.) Here, OCSS and IREA could have demanded payment when plaintiff first paid out no-fault benefits to Pope. (*See*

id., citing Domestic Relations Law § 240 [1-b] [b] [5] [iii] [A].) Plaintiff's statutory lien takes precedence over OCSS's and IREA's liens.

This court is not persuaded by Bader's argument that *Daniels* involved a workers' compensation lien, and therefore did not resolve Bader's doubts here.¹ To be sure, the reasoning in *Daniels*, as affirmed by the Fourth Department, gained additional force from the well-established "inviolability" of liens held by workers' compensation carriers, in particular. (*See Daniels*, 11 AD3d at 945.) But just as in *Daniels*, plaintiff here is an insurer holding a lien conferred by statute to secure the repayment of no-fault benefits. (*See Insurance Law* § 5104 (b).) Additionally, the child-support lien in *Daniels* mirrors OCSS and IREA's liens in attaching to the initial benefits payment by plaintiff. (*See 196 Misc 2d* at 597.) Thus, *Daniels* provided a clear structure for the relative priority of the four liens here, under which Bader has priority over plaintiff, which in turn has priority over OCSS and IREA. The purported conflicting liens did not provide a reasonable basis for Bader to withhold funds.

Further, Bader did not interplead OCSS and IREA until six months after plaintiff filed this lawsuit, over one year after the third-party settlement with Haidara. Bader and Pope were aware of plaintiff's, OCSS's, and IREA's liens at the time they settled with Haidara but did nothing with the funds. (*See NYSCEF No. 15* at 2.) Bader and Pope do not provide a reasonable basis for this delay. This failure, and their exposure to liability, establish that Bader and Pope are not mere stakeholders entitled to relief under CPLR 1006. Bader and Pope cannot pay the settlement funds into this court, be discharged of liability, or have the cross-claims dismissed.

Accordingly, it is hereby

ORDERED that the branch of plaintiff's motion under CPLR 3212 seeking summary judgment in its favor on liability is granted; and it is further

ORDERED that the branch of plaintiff's motion under CPLR 3212 seeking summary judgment awarding 22% in legal fees under State Finance Law § 18 is denied; and it is further

ORDERED that Bader's cross-motion seeking relief under CPLR 1006 (f) is denied; and it is further

¹ Bader also asserts that the trial-court decision in *Daniels* has diminished weight because it is from outside the First Department. (*See NYSCEF No. 28* at 4.) But as noted above, the trial-court decision was affirmed on appeal. A Fourth Department decision binds this court absent contrary First Department authority. (*See D'Alessandro v Carro*, 123 AD3d 1, 6 [1st Dept 2014].) Regardless, even if it were standing alone, the trial-court decision in *Daniels* would have substantial persuasive force given its careful reasoning and the relative dearth of precedent on the issue presented here.

ORDERED that Bader is to deduct its charging lien from the settlement funds, then repay plaintiff's \$12,124.03 lien (plus interest) from the remaining funds, then repay OCSS's and IREA's liens to the extent possible with the funds left over, before Pope may recover.

7/7/2020
DATE


HON. GERALD LEBOWITZ
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE