

At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on May 8, 2020.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
WESTCHESTER COUNTY HEALTHCARE CORP.
D/B/A MIDHUDSON REGIONAL

Plaintiff

Index No.: 54018/2018

-against-

DECISION AND ORDER
(Motion Sequence 1)

[REDACTED]

Defendant

-----X
Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Defendant's Notice of Motion for Summary Judgment:

<u>Papers</u>	<u>Numbered</u>
Defendant Notice of Motion/ Affirmation of Juliya Kholick, Esq./ Exhibits 1-6	1
Affirmation of David Arpino, Esq./ Affidavit of [REDACTED] [REDACTED]	2

RELEVANT BACKGROUND

Defendant files this Notice of Motion, seeking summary judgment in its favor. Plaintiff commenced this action, on or about October 23, 2018 for judgment against Defendant in the amount of \$35,154.70, for medical services provided that remain unpaid. Defendant argues that Plaintiff is not entitled to reimbursement, as Plaintiff failed to submit the no-fault claims to the insurer, with the requested verifications, thus the insurer denied payment. Defendant argues that based upon a NF-AOB, it assigned its rights to Plaintiff, and as such, Plaintiff is not entitled to seek payment from Defendant for the services provided. *See*, Affirmation of Attorney Kholik at paragraphs 1-11, Defendant's Exhibits 1 and 3.

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Plaintiff opposes Defendant's motion for summary judgment. The crux of Plaintiff's argument is that the document which Defendant relies on; the basis Defendant gives as to why the hospital should be prohibited from seeking payment for the medical services provided to him, is not a valid No-Fault Assignment of Benefits (NF-AOB) form utilized by the hospital. Plaintiff argues that the form submitted with this motion by Defendant, is dated six months after services were provided and does not bear the signature of any hospital representative. Therefore, as a matter of contract law, the NF-AOB, is not properly executed and cannot be valid. Plaintiff contends that Defendant is unable to show the meeting of the minds necessary to establish the contractual relationship between the parties. Plaintiff argues further that Defendant cannot be successful on this motion, as the documents submitted with the instant motion are unauthenticated and without certification, thus should be deemed inadmissible. Lastly, Plaintiff declares that summary judgment should be denied as there are issues of fact that exist, and summary judgment would not be appropriate. *See* Affirmation of Attorney Arpino at paragraphs 1-17; *see also* Affidavit of [REDACTED] at paragraphs 5-10.

DISCUSSION

It is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must show facts sufficient to require a trial of any issue of fact. Normally if the opponent is to succeed in defeating a summary judgment motion, the opponent must make his showing by producing evidentiary proof in admissible form. The rule with respect to defeating a motion for summary judgment, however, is more flexible, for the opposing party, as contrasted with the movant. *See, Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980).

Notably, the assignment of benefit form provided by New York State Department of Motor Vehicles provides blank spaces for the patient/assignor's name; for the health care provider/assignee's name; for the date of the accident; for the signatures and addresses of both assignor and assignee; and for the date of the assignment. The form clearly illustrates that the particular information requested is required in order for the assignment to be deemed valid. *See, T & G Med. Supplies, Inc. v Natl. Grange Mut. Ins. Co.*, 9 Misc. 3d 767, 770 (New York County, Civ. Ct. 2005).

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Defendant has failed to meet its burden of proof and has not shown the absence of triable issues of fact. The NF-AOB presented by Defendant, raises issues of fact. Defendant gave no rationale or further argument for this Court to consider as a basis for the document to be valid. Despite all the arguments about Plaintiff failing to submit its claims properly, the evidence submitted does not demonstrate that there is a valid assignment of benefits, that would relieve Defendant of the responsibility of paying for medical services it received. In light of the foregoing, coupled with Plaintiff's arguments that the documents presented by Defendant as evidence should be deemed inadmissible, Defendant has not demonstrated its entitlement to judgment as a matter of law. Since the burden of proof has not been met by the movant, there is no need to consider the papers or evidence of the opposing party. To that extent, Defendant's application for summary judgment is **denied**.

Accordingly, it is hereby,

ORDERED, that Defendant's Motion for Summary Judgment is denied; and it is further

ORDERED, that the parties and their respective counsel shall **appear in Court for conference on July 22, 2020 at 9:30 a.m.**

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: May 8, 2020

Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do

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not submit any copies. Please submit only the original papers.

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