

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : 2nd and 11th JUDICIAL DISTRICTS

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PRESENT : WESTON PATTERSON, J.P., GOLIA and STEINHARDT, JJ.  
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MIDWOOD ACUPUNCTURE, P.C.  
a/a/o SHEILA JOHNSON,

Respondent,

-against-

DEC 05 2008  
NO. 2007-1668 K C

DECIDED

STATE FARM FIRE AND  
CASUALTY COMPANY,

Appellant.  
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Appeal from an order of the Civil Court of the City of New York, Kings County (Robin D. Garson, J.), entered August 14, 2007. The order, insofar as appealed from, granted the branch of defendant's cross motion that sought to compel plaintiff to produce its owner, Valentina Anikeyeva, for an examination before trial and to compel plaintiff to respond to defendant's combined discovery demands only to the extent of directing plaintiff to "serve a written response to [defendant's] discovery demands regarding management agreements, rental lease agreements . . . at or around the time the services in issue were rendered."

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Order, insofar as appealed from, modified by providing that the branch of defendant's cross motion seeking to compel plaintiff to produce its owner, Valentina Anikeyeva, for an examination before trial and to compel plaintiff to respond to defendant's combined discovery demands is granted to the extent of compelling plaintiff to produce the documents and information demanded in items numbered 6, 9, 19, 29-30 and 32-36 of defendant's notice for discovery and inspection and to serve answers providing the information sought in items numbered 1, 15-16, 18, 32, 37, 39-40 and 44-46 of defendant's demand for verified written interrogatories within 60 days of the date of the order entered hereon and by further compelling plaintiff to produce its owner, Valentina Anikeyeva, for an examination before trial in the courthouse of the Civil Court of the City of New York, Kings County, within 30 days thereafter, or on such other date to which the parties shall agree, but in no event later than 60 days thereafter, as so modified, affirmed without costs.

In this action by a provider to recover assigned first-party no-fault benefits, plaintiff moved for summary judgment. Defendant cross-moved to strike plaintiff's complaint pursuant to CPLR 3126 or, in the alternative, to compel plaintiff to produce its owner, Valentina Anikeyeva, for an examination before trial (EBT), to respond to defendant's demand for verified written interrogatories and to produce the documents demanded in defendant's notice for discovery and inspection. The court denied

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To the extent the discovery demands concern matters relating to defenses which defendant is precluded from raising, they are palpably improper notwithstanding the fact that plaintiff did not specifically object thereto (see A.B. Med. Servs. PLLC, 11 Misc 3d 71). However, the record reveals that defendant set forth detailed and specific reasons for believing that plaintiff may be ineligible to recover no-fault benefits as a fraudulently incorporated professional service corporation (see State Farm Mut. Auto. Ins. Co. v Mallela, 4 NY3d 313 [2005]), a defense which is not precluded. Discovery of, among other things, plaintiff's certificate of incorporation and the names of plaintiff's shareholders, is material and necessary to defendant's defense that plaintiff is ineligible for reimbursement of no-fault benefits (see CPLR 3101 [a]; One Beacon Ins. Group, LLC v Midland Med. Care, P.C., 54 AD3d 738 [2008]; Great Wall Acupuncture, 20 Misc 3d 136[A], 2008 NY Slip Op. 51529[U]). As a result, defendant is entitled to production of the documents and information demanded in items numbered 6, 19, 29-30 and 32-36 of its notice for discovery and inspection and to answers providing the information sought in items numbered 1, 15-16, 18, 32, 39-40 and 44-46 of its demand for verified written interrogatories since said items were not palpably improper or privileged.

We further note that special circumstances exist which warrant the disclosure of plaintiff's corporate income tax returns (see CPLR 3101 [a]; Great Wall Acupuncture,

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20 Misc 3d 136[A], 2008 NY Slip Op 51529[U]; Statewide Med. Servs., P.C. v Travelers Ins. Co., 13 Misc 3d 134[A], 2006 NY Slip Op 52014[U] [App Term, 1st Dept 2006], revg 9 Misc 3d 1124[A], 2005 NY Slip Op 51773[U] [Civ Ct, Bronx County 2005]; see also One Beacon Ins. Group, LLC, 54 AD3d 738; Dore v Allstate Indem. Co., 264 AD2d 804 [1999]; cf. Benfeld v Fleming Props., LLC, 44 AD3d 599, 600 [2007]; Altidor v State-Wide Ins. Co., 22 AD3d 435 [2005]. Accordingly, defendant is also entitled to the documents demanded in item number 9 of its notice for discovery and inspection and to the answer sought in interrogatory number 37.

Plaintiff's contention that defendant is not entitled to compel plaintiff to produce its owner, Valentina Anikeyeva, for an EBT, because she appeared for an EBT in another action with respect to a different professional service corporation owned by her, lacks merit since defendant's defense to this action is based upon the alleged ineligibility of the plaintiff herein to receive reimbursement of assigned no-fault benefits (see Mallela, 4 NY3d 313). Consequently, defendant is entitled to an EBT of Anikeyeva with respect to the instant plaintiff (see CPLR 3101 [a]; see also Vladimir Zlatnick, M.D., P.C. v Government Empls. Ins. Co., 2 Misc 3d 347, 353 [Civ Ct, NY County 2003] ["Depositions, in certain cases under the no-fault laws, for example, may be helpful in detecting instances of fraud"]).

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To the extent defendant's cross motion also sought to compel production of Valentina Anikeyeva's personal federal and state income tax returns, defendant failed to establish its entitlement to such documents since "[i]t is well settled that tax returns are generally not discoverable in the absence of a strong showing that the information is indispensable to the claim and cannot be obtained from other sources" (Altidor, 22 AD3d at 435-436 [citations and internal quotation marks omitted]; see also Benfeld, 44 AD3d at 600). As a result, at this juncture, defendant failed to meet its burden of establishing that Valentina Anikeyeva's personal income tax returns are properly discoverable, particularly where, as here, defendant is entitled to disclosure of plaintiff's income tax returns and the requested financial information with respect to said corporation.

Weston Patterson, J.P., and Steinhardt, J., concur.

Golia, J., concurs in part and dissents in part in a separate memorandum.