

State Farm Ins. Co. v Arcena-Almonte

2007 NY Slip Op 33148(U)

September 28, 2007

Supreme Court, New York County

Docket Number: 3755-05/

Judge: Ute W. Lally

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SCAN

SHORT FORM ORDER

mg

SUPREME COURT - STATE OF NEW YORK

Present:

HON. UTE WOLFF LALLY,

Justice

TRIAL/IAS, PART 8
NASSAU COUNTY

STATE FARM INSURANCE COMPANY,

Plaintiff(s),

MOTION DATE: 7/11/07

INDEX NO.: 13755/05

-against-

SEQ. NO.3

I. ARACENA-ALMONTE a/k/a ALMONTE I. DRACENA,
FRANCISCO CASTRO GONZALEZ a/k/a ALBERTO
FRANCISCO CASTRO GONZALEZ, AMBIORIS CASTRO-
GONZALES, LANEIDE MONTERO, AHMED NAWAB MALIK
and NIGHT N. MALIK,

Defendant (s)

The following papers read on this motion to dismiss the complaint:

Notice of Motion/ Order to Show Cause.....	1-4
Answering Affidavits.....	5-7
Replying Affidavits.....	8,9

Upon the foregoing papers, it is ordered that this motion by defendant Laneide Montero for an order pursuant to CPLR 3126 dismissing plaintiff's complaint for failure to comply with a preliminary conference order and defendant's notice for discovery and inspection, or in the alternative for an order pursuant to CPLR 3124 compelling the plaintiff to comply with the preliminary conference order and defendant's notice for discovery and inspection is granted.

This is an action brought by plaintiff seeking a declaratory judgment that it is not required to defend or indemnify any of the defendants who are insureds, and directing that it is not required to pay any monies or damages to the defendants.

A preliminary conference stipulation and order was entered into on October 10, 2006. In the order the plaintiff agreed to provide the defendant with the full names and job titles of all no-fault claims, bodily injury claims, special investigation unit and fraud unit representatives, as well as in house investigators. Defendant alleges plaintiff's response was insufficient in that it supplied the name and job title of one individual and the names of other individuals, but gave no indication as to the positions these individuals may hold within the company. The defendant also served upon the plaintiff notice for discovery and inspection on March 7, 2007. In the notice the defendant demanded copies of all training manuals, procedures and guidelines that relate to the handling and evaluation of all no-fault, bodily injury and special investigation claims. Plaintiff served a response objecting to the demand, stating that such materials contain trade secrets and are, therefore, no discoverable.

"Generally, there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action" (Parise v Good Samaritan Hosp., 36 AD3d 678; see also Auerbach v Klein, 30 AD2d 451). The phrase "material and necessary" should be interpreted liberally to mandate disclosure, upon request, of any facts which will assist preparation for trial by clarifying the issues and reducing delay and prolixity (Parise v Good Samaritan Hosp., supra see also, Andon v 302-304 Mott Street Assocs., 94 NY2d 740, 746; Allen v Cromwell-Collier Pub. Co., 21 NY2d 403, 406).

Defendant contends that he is entitled to the names and job titles of all no-fault claims analysts, bodily injury claims analysts, special investigation unit representatives, fraud unit representatives and in house investigators that handled or investigated the claim or claims that gave rise to this action. The defendant claims that it is necessary to question these individuals to discern how the plaintiff concluded that the accident was staged and if the disclaimer of the defendants by the plaintiff was proper. Plaintiff claims that they supplied the name and job title of an individual who investigated the claims and the defendant can inquire as to the names and job titles of other individuals who may have handled the claims when he questions this individual at an examination before trial.

A party is generally entitled to disclosure of the names and addresses of witnesses who possess information that is material and necessary to the prosecution or defense of an action where it has not been asserted that the information is privileged (Skowronski v F and J Meat Packers, Inc., 210 AD2d 392; see also Culbert v City of New York, 254 AD2d 385; Zayas v Morales, 45 AD2d 610).

Plaintiff has made no assertion that the names and job titles of its employees are privileged and not discoverable. Defendant has demonstrated that these employees possess information that is "material and necessary" to the defense of this action. These individuals gathered and evaluated evidence which ultimately led plaintiff to the conclusion that the accident was staged and the result of fraud. An examination of these individuals would inform the defendant what evidence was gathered, how it was considered and how best to proceed with the defense in this action.

Accordingly, the defendant is entitled to the names and job titles of all no-fault claims analysts, bodily injury claims analysts, special investigation unit representatives, fraud unit representatives and in house investigators that handled or investigated the claims that gave rise to this action.

Defendant also maintains he is entitled to copies of all training manuals, procedures and guidelines that relate to the handling and evaluation of all no-fault, bodily injury and special investigation claims. Plaintiff claims that it has one manual meeting this description entitled *The Claims Procedure Guide*. Plaintiff further asserts that this document contains trade secrets and, therefore, is not discoverable.

"Although the scope of discovery under CPLR 3101 is to be construed liberally, where discovery of trade secrets is sought, the party seeking disclosure of trade secrets must show that the information demanded appears to be indispensable to the ascertainment of truth and cannot be acquired in any other way: (CareCore National, LLC v New York State Association of Medical Imaging Providers, Inc., 24 AD3d 488 489; see also Deas v Carson Products Company, 172 AD2d 795). The party asserting that the information is not discoverable bears the initial burden of establishing the existence of trade secrets within the information

sought (Xand Corporation v Reliable Systems Alternatives Corp., 25 AD3d 795). Factors to be considered when determining if something is a trade secret are the extent to which the information is known to the general public, the extent to which the information is known to the employees, the measures taken to guard the secrecy of the information and the ease or difficulty by which the information could be procured by others (Ashland Management, Inc. V Janien, 82 NY2d 395).

Plaintiff submits the affidavit of Sean Surdich who is employed as a team manager in its Special Investigation Unit. He states that *The Claims Procedure Guide* is not available to the general public and is only available to plaintiff's employees. He also states that the employees are prohibited from disclosing the information contained in the guide to non-employees. He claims that the plaintiff attempts to protect the guide from public disclosure and further claims that the plaintiff believes that should the guide be disclosed it would give its competition an advantage.

This court finds that, based upon the evidence submitted, the plaintiff has sustained its initial burden of demonstrating that the guide contains trade secrets (see Xand Corporation v Reliable Systems Alternatives Corp., supra; see also Curtis v Complete Foam Insulation Corp., 116 AD2d 907). The burden now shifts to the defendant to show that the information appears to be indispensable to the ascertainment of truth and cannot be acquired in any other way (Deas v Carson Products Company, supra).

The evidence submitted by the plaintiff demonstrates that the information contained in the guide cannot be acquired in any other way. In his affidavit Sean Surdich states that the plaintiff has developed these guidelines internally over a long period of time and the information is not available to anyone not employed by plaintiff and plaintiff's employees are prohibited from divulging this information.

The defendant must show that the information being sought appears indispensable to the ascertainment of truth. The defendant claims that the guide is necessary to determine whether or not plaintiff's employees follows proper procedures when concluding

that a disclaimer of coverage was necessary. The main question to be determined is whether the disclaimer of coverage was proper. How the employees evaluated the claim, and if they followed guidelines, may have a direct bearing on the propriety of the disclaimer. Therefore, this court finds the defendant has shown that the information contained in *The Claims Procedure Guide* appears to be indispensable to the ascertainment of the truth, and the defendant is entitled to discover the guide and any other training manual, guideline, instructional manual and computer program that sets forth guidelines an employee must follow when handling or evaluating a no-fault or bodily injury claim.

Accordingly, plaintiff's complaint shall be dismissed unless it serves upon the defendant's attorney the requested discovery as modified by this order within twenty (20) days of the service of this order with notice of entry upon plaintiff's attorney.

Dated: SEP 28 2007

Ulthals
J.S.

ENTERED
OCT 03 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE