

Weisel v Provident Life & Cas. Ins. Co.

2009 NY Slip Op 33276(U)

May 14, 2009

Supreme Court, New York County

Docket Number: 600759-05

Judge: Judith J. Gische

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Conrad
5-22-09

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

Justice

Ronald Weisel

Plaintiff (s),

INDEX NO. 600759-05

MOTION DATE _____

Provident Life & Casualty Ins. Company et al
-v-
Defendant(s)

MOTION SEQ. NO. 008

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

This motion (sequence #8) is hereby restored to the active calendar and decided in accordance with the accompanying decision/order of even date

FILED

MAY 26 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated:

May 14, 2009

Hon. Judith J. Gische, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

RECORDED IN FULLY FILED IN JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X

RONALD WEISEL,
Plaintiff,

-against-

PROVIDENT LIFE AND CASUALTY
INSURANCE COMPANY *et al*
Defendants.

Decision/Order

Index No.: 600759/05
Seq. Nos. : 008

Present:
Hon. Judith J. Gische
J.S.C.

-----X

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

RW's OSC #8 (RR-Reserve Funds) w/MSH affirm, SRM affirm, exhs	1
Exhs- sep backs (Vol I & II)	2,3
Defs' opp w/SRM affirm, exhs	4
RW's reply w/MSH affirm, exh	5
Order, Gische J., 3/10/09 (resolving motion)	6

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 MAY 26 2009
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Upon the foregoing papers, the decision and order of the court is as follows:

In its decision and order dated October 30, 2008, entered November 5, 2008 ("October 30, 2008 discovery order") the court ordered that defendants produce certain documents that plaintiff had requested in discovery. Plaintiff's motion, however, was denied as it related to discovery of information about reserve funds maintained by the defendants. Plaintiff now moves to reargue the court's October 30, 2008 discovery order on the basis that the court misapprehended the relevant facts and misapplied the law. The motion is opposed by the defendants who argue the court did not make a mistake, and the court should not modify its decision.

By prior order of this court dated March 10, 2009, this motion for reargument was marked resolved as per a "so-ordered" stipulation of the parties dated March 10, 2009.

That stipulation, however, pertained to a different dispute between the parties, not this motion. Consequently, this motion presents a dispute that has to be decided. Since the "resolved" marking was in error, this motion is hereby restored to the active calendar and will now be decided on the merits.

Plaintiff argues that the court misapprehended certain material facts and misapplied the law when it denied his motion. Plaintiff contends that he is not asking for information about defendants reserves to prove that his disability claim was wrongfully denied, but to establish the pattern he contends existed which precipitated decisions to deny coverage based upon the "bottom line" of the company, not on the merits of the disabled/insureds' claims. According to plaintiff defendants had a pattern and practice of transferring millions of dollars from its reserve accounts to its general operating account, and that they did this to make themselves appear more profitable than they really were.

A motion for leave to reargue pursuant to CPLR 2221 is addressed to the court's discretion. Foley v. Roche, 68 AD2d 558, 567 (1st Dept. 1979). It may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision. William P. Pahl Equipment Corp. v. Kassis, 182 A.D.2d 22, 27 (1st Dept 1992).

The foregoing legal threshold has not been met by plaintiff and permission to reargue is hereby denied. The court did not, as the plaintiff contends, misapprehend the facts or his legal arguments. The court did not misapply the law.

While initially plaintiff hopes to prove at trial or other disposition of this case that defendants engage in a pattern of transferring money from reserves to their operating account to make themselves appear more profitable, ultimately what plaintiff seeks to

prove is that this practice led to, and was the underlying motivation for, why his claim was denied, although it was bona fide.

Plaintiff then - as now - has failed to persuade the court that his use or need for reserve fund information is superior to or distinguishable from the legions of cases holding that such information is not, as a general rule, discoverable.

Reserve funds are simply estimated values of claims which will be paid on policies that the company is carrying. Every insurer is legally obligated to maintain reserves in an estimated amount that, in the aggregate, will provide for the payment of all losses or claims for which the insurer may be liable. Ins Law § 1303. The issue of sufficiency of reserve funds would, by itself, require a hearing and the statute does not specify how reserves are to be determined. *see, Stewart v. Citizens Cas. Co. of New York*, 23 N.Y.2d 407, 414 (1968). The leap that plaintiff seeks to make in this case is that the defendants kept inadequate reserves to boost their profit margin and that this practice was the reason (and their motivation) for denying his claim and others like it. These exact arguments were made by the plaintiff on the underlying motion. They were considered by the court and decided against plaintiff. He has not persuaded the court that the information about reserve funds is material to his claims, nor that it will streamline or sharpen the issues for trial. The court adheres to its prior decision/order and permission to reargue is denied. Defendants do not have to produce documents concerning their reserve funds.

Conclusion

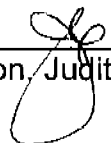
Plaintiff's motion for permission to reargue the court's prior order is hereby denied in all respects. The October 30, 2008 order entered November 5, 2008 is effective and unmodified.

Any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied.

This constitutes the decision and order of the court.

Dated: New York, New York
May 14, 2009

So Ordered:



Hon. Judith J. Gische, J.S.C.

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