

Utica Mut. Ins. Co. v Saintfelix

2011 NY Slip Op 30591(U)

March 1, 2011

Sup Ct, Nassau County

Docket Number: 9520-09

Judge: Arthur M. Diamond

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

-against-

TRIAL PART: 14
NASSAU COUNTY

INDEX NO:9520-09

**JEAN SAINTFELIX, YMIDE FENELON, MARIE
CARLINE, DELICES, AMENA PIERRE-LOUIS,
JOANNA PARKER, PIERRE TELFORT, LUZ COLLADO,
JEAN JACOB, ALL STAR WELLNESS MEDICAL, P.C.,
BONAVERA ACUPUNCTURE, P.C. IDEAL MEDICAL
SUPPLY INC., CENTRAL NASSAU DIAGNOSTIC
IMAGING, P.C. CANNON CHIROPRACTIC CARE, P.C.,
BNN CHIROPRACTIC, P.C., BENIGNO R. SALES, M.D.,
LITTLE NECK RADIOLOGY, P.C., DRUGS R US
PHARMACY, INC., SPECTRUM 205 MEDICAL,
GREAT HEALTHPOINT ACUPUNCTURE, P.C.,
USA PSYCHOLOGICAL, P.C., BRIGHT MEDICAL
SUPPLY CORP., B&H MEDICAL SUPPLY OF NEW YORK,
INC. and IMMEDIATE IMAGING P.C.,**

Defendants.

MOTION SEQ. NO: 4

SUBMIT DATE: 01/13/11

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The following papers having been read on this motion:

- Notice of Motion..... 1**
- Opposition.....2**
- Reply.....3**

The plaintiff, Utica Mutual Insurance Company's (hereinafter "Utica") motion for summary judgment , pursuant to CPLR § 3212, against defendant, Bright Medical Supply Corp. (hereinafter "Bright"), in this action for a declaratory judgment, is granted.

Utica commenced this action for a declaration of no coverage of any nature to the named defendants under the terms of the two Utica policies of insurance, policy number 4031385 issued to defendant Jean Saintfelix - the date of loss of April 27, 2008 and policy number 4032070 issued to defendant Amena Pierre-Louis - date of loss of July 19, 2008, as the subject dates of loss were due to staged events caused in the furtherance of an insurance fraud scheme so that there is no

coverage under the terms of the policies in question.

Defendants Bright, BNN Chiropractic, P.C. (hereinafter “BNN”), Spectrum 205 Medical, P.C. (hereinafter “Spectrum”) and Great Healthpoint Acupuncture, P.C. (hereinafter “Great Healthpoint”) appeared and answered. Pursuant to stipulations Utica discontinued the action against defendants Little Neck Radiology, P.C., and Immediate Imaging, P.C.

Justice Palmieri, by Order, dated May 14, 2010 (entered May 18, 2010), granted Utica’s motion for a default judgment against the non appearing defendants and the matter was severed and continued as against defendants Bright, BNN, Spectrum and Great Healthpoint.

In the instant motion, Utica seeks an order granting summary judgment only against defendant, Bright. Utica asserts it is not seeking summary judgment as to defendants, BNN, Spectrum and Great Healthpoint, at this time as it is in negotiations with those defendants.

Utica asserts that Bright submitted two claims/bills for payment related only to the date of loss of July 19, 2008 for assignors, Amena Pierre Louis (hereinafter “Louis”) and Joanna Parker (hereinafter “Parker”) both of whom were in the Utica vehicle insured under policy number 004032070 issued to Louis for the loss date of July 19, 2008. Bright submitted one bill dated October 10, 2008, in the amount of \$978.00, was for durable goods in the form of an EMS accessory kit, EMS unit, EMS/ten’s placement belt and infrared heating lamp, which according to the bill were provided to Louis on or about September 10, 2008, the second bill, dated October 31, 2008, in the amount of \$690.23, was for durable goods, a custom fitted Shoulder Orthosis provided to Parker on September 25, 2008.

Utica contends that it is entitled to a declaration of no coverage for any bills submitted by Bright for the date of loss of July 19, 2008 as those claims were based upon a staged/intentional event for which there is no coverage under the terms of Utica’s policy of insurance (Pltf’s Ex A). See Metro Med Diagnostics, P.C., v. Eagle Ins. Co., 293 AD2d 751 (2nd Dept. 2004); Liberty Mutual Ins. Co., v. Goddard, 29 AD3d 698 (2nd Dept. 2006); Eagle Ins Co., v. Davis, 22 AD3d 846 (2nd Dept. 2005); State Farm Mutual Auto Ins. Co., v. Laguerre, 305 AD2d 490 (2nd Dept. 2003); GEICO v. Shaulskaya, 302 AD2d 522 (2nd Dept. 2003); V.S. Medical Services, P.C., v. Allstate Ins. Co., 11 Misc.3d 334 (Civ. Ct. City of New York, Kings Co. 2006); Universal Open MRI of the Bronx, P.C., v. State Farm Mutual Auto Ins. Co., 12 Misc 3d 1151(A) (Civ. Ct. City of New York, Kings Co. 2006).

In support of its contention that the subject claims arose from a staged/intentional accident Utica submitted: the two bills from Bright (Pltf's Ex. J); certified copies of the Police accident report for the July 19, 2008 accident (Pltf's Ex. I) and the deposition transcript of defaulting defendant, Pierre Telfort (hereinafter "Telfort") (Pltf's Ex. H)¹.

The Police Report for the July 19, 2008 accident indicates that Utica's insured Louis was operating the Utica insured vehicle, a 1994 Ford bearing license plate EJE9832, with Parker and Jack Pierre in it as passengers on Jamaica Ave. at or about its intersection with 212th St., in Queens, New York when it was in contact with a 1995 Toyota, license plate EFE4849 owned and operated by Jean Jacob.

Telfort testified, in pertinent part, at his deposition (Pltf's Ex. H deposition transcript) that the incident on July 19, 2008 involving Louis and Parker was a staged event in furtherance of an insurance fraud scam. He was contacted on July 18, 2008 (the day before the subject incident) by his cousin, Jean Franks and his cousin's friend "Alex" who told he was planning a staged auto accident for the next day on Jamaica Ave., and wanted him to be involved. Alex told him that he did not have to be in the car, but just had to provide his full name and information and would have to meet Alex at a medical facility after the accident when Alex called. Alex told him the driver would be Louis and that Parker would be a passenger in the vehicle and he would also be listed as a passenger. He was to get paid \$1,000.00 to be involved in the scheme and claim he was in the vehicle and injured in the accident. Telfort testified Alex called and told him to meet at a medical facility on July 22, 2008. When he met Alex, Louis and Parker at the medical facility they told him the details of the incident and that Louis intentionally crashed the vehicle into another vehicle in a sideswipe fashion on Jamaica Ave. Telfort testified that Louis told him she intentionally crashed the vehicle with Parker in it as a passenger and he knew that Parker was involved in the scheme as well. Telfort also testified that he intentionally lied at the medical facility and told them that he was a passenger in the vehicle and, injured and that both Louis and Parker also made claims at that medical facility of being injured in the accident even though they had not been injured.

It is well settled that an intentional and staged collision caused in the effort to promote an

¹ Mr. Pierre Telfort appeared and testified pursuant to a So Ordered subpoena issued by Justice Palmieri, although movant's attorney makes reference to transcript page numbers, the copy annexed to the motion are not numbered.

insurance fraud scheme is not a covered “accident” under an automobile policy of insurance. See GEICO v. Shaulskaya, supra. A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident. See Metro Med. Diagnostics, P.C. v. Eagle Ins. Co., supra.

“On a motion for summary judgment pursuant to CPLR § 3212, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” Sheppard-Mobley v. King, 10 AD3d 70, 74 (2nd Dept. 2004), aff’d as mod., 4 NY3d 627 (2005), citing Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (1986); Winegrad v. New York Univ. Med Ctr., 64 NY2d 851, 853 (1985). “Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.” Sheppard-Mobley v. King, supra at 74; Alvarez v. Prospect Hosp., supra; Winegrad v. New York Univ. Med Ctr., supra. Once the movant’s burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact. Alvarez v. Prospect Hosp., supra at 324. The evidence presented by the opponent of summary judgment must be accepted as true and must be given the benefit of every reasonable inference. See, Demishick v. Community Housing Management Corp., 34 AD3d 518, 521 (2nd Dept. 2006) citing Secof v. Greens Condominium, 158 AD2d 591 (2nd Dept. 1990).

Based upon the movants proffered evidence, specifically the deposition testimony of Telfort, the plaintiff has established that Louis and Parker voluntarily participated in and were involved in staging and intentionally causing the accident on July 19, 2008. Accordingly, plaintiff, Utica established its *prima facie* entitlement to judgment as a matter of law. See Zuckerman v. City of New York, 49 NY2d 557 (1980).

Defendant, Bright submitted an Affirmation in Opposition, which did not contain any evidence to rebut the plaintiff’s proof and was not responsive to the instant motion.²

Moreover, Bright’s contention that judgment cannot be granted against it because it has not been proven that its assignors were part of a fraudulent scheme is without merit. As previously stated

² Bright’s attorney in his Affirmation in Opposition, dated December 10, 2010, incorrectly asserts that the plaintiff is seeking a default judgment against defendants other than Bright and as such is not applicable to Bright and no motion for summary judgment has been made as and against it. Bright also refers to exhibits and EUO testimony transcripts which are not part of this motion.

plaintiff established that Bright's assignors, Louis and Parker, were involved in the staged/intentional accident and no evidence was submitted to rebut that *prima facie* showing.

Accordingly as Bright's assignors, claims were based upon a deliberate collision which they participated in causing in the furtherance of insurance fraud scheme the incident is not a covered accident. See Metro Med Diagnostics, P.C., v. Eagle Ins. Co., supra; Liberty Mutual Ins. Co., v. Goddard, supra; Eagle Ins Co., v. Davis, supra; State Farm Mutual Auto Ins. Co., v. Laguerre, supra; GEICO v. Shaulskaya, supra.

As defendant, Bright's assignors, were involved in the fraudulent scheme to commit insurance fraud and the event was the result of misconduct on their part, the claims are not covered as the event from their viewpoint was not "unexpected, unusual and unforeseen". See State Farm Mutual Auto Ins. Co., v. Langan, 55 AD3d 281 (2nd Dept. 2008).

Therefore it is hereby Ordered, that plaintiff's motion for summary judgment against defendant Bright Medical Supply Corp., is granted in its entirety.

This constitutes the decision and order of the court.

DATED: March 1, 2011

ENTER



HON. ARTHUR M. DIAMOND
J. S.C.

ENTERED

MAR 03 2011

NASSAU COUNTY
COUNTY CLERK'S OFFICE