

Schneck v First Unum Life Ins. Co.

2014 NY Slip Op 30051(U)

January 9, 2014

Supreme Court, New York County

Docket Number: 155800/2012

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 155800/2012
SCHNECK, ERIC
VS.
FIRST UNUM LIFE INSURANCE
SEQUENCE NUMBER : 001
QUASH SUBPOENA, FIX CONDITIONS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1, 2, 3

Answering Affidavits — Exhibits _____ No(s). 4, 5

Replying Affidavits _____ No(s). 6

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 1/9/2014

HON. EILEEN A. RAKOWER J.S.C.

- 1. CHECK ONE: ... CASE DISPOSED ... NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ... MOTION IS: ... GRANTED ... DENIED ... GRANTED IN PART ... OTHER
3. CHECK IF APPROPRIATE: ... SETTLE ORDER ... SUBMIT ORDER ... DO NOT POST ... FIDUCIARY APPOINTMENT ... REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X

ERIC SCHNECK,

Index No.
155800/2012

Plaintiff,

**DECISION
and ORDER**

- against -

FIRST UNUM LIFE INSURANCE COMPANY,

Mot. Seq.
001

Defendant.

-----X

EILEEN A. RAKOWER, J.S.C.

This is an action for damages for breach of contract. In this action, Plaintiff Eric Schneck’s (“Plaintiff”) seeks long-term disability insurance benefits under a policy issued to him by defendant First Unum Life Insurance Company (“Defendant” or “First Unum”). The policy conditions payment on proof that the insured “cannot perform each of the material duties of regular occupation.”

Plaintiff is a member of the Bar who, from December 2007 to June 2008, was a shareholder of Anderson Kill & Olick P.C. (“Anderson Kill”), and as a shareholder, participated in the firm’s group long-term disability plan issued by First Unum. Plaintiff alleges that after he left Anderson Kill, he converted his group disability coverage into a First Unum non-ERISA long term disability insurance certificate or policy. Plaintiff further alleges that in May 2009, Plaintiff submitted to First Unum a claim for long term disability benefits, allegedly informing First Unum that he was no longer employed and claiming that he could not perform each of the material duties of his regular occupation.

In July 2009, Unum approved Plaintiff’s claim, paid Plaintiff benefits from May 2009 to May 2011, and then informed Plaintiff by letter dated May 17, 2011 that Unum was ceasing to pay Plaintiff the benefits because he was no longer disabled pursuant to the Policy. Plaintiff contends in this action that he continues to be “disabled” pursuant to the Policy.

The Policy at issue defines disability and disabled to mean that “because of injury or sickness: 1. [the insured] cannot perform each of the material duties of his regular occupation; and 2. After benefits have been paid for 24 months, [the insured] cannot perform each of the material duties of any gainful occupation for which [the insured is] reasonably fitted taking into consideration training, education, or experience.” “Regular occupation” is defined as “occupation at the time disability begins.”

Presently before the Court is Plaintiff’s motion to quash a subpoena ad testificandum and duces tecum that Defendant served on Plaintiff’s former employer, Anderson Kill, and for a protective order. In the alternative, Plaintiff seeks an Order directing Anderson Kill to deliver to the Court the documents that are responsive to the Subpoena for an in camera inspection. Plaintiff contends that Defendant’s subpoena is overly broad and argues that his “regular occupation is not at issue” because First Unum made 24 monthly “regular occupation” benefit payments to Plaintiff.

Defendant cross moves to compel Anderson Kill to comply with the Subpoena.

The Subpoena propounded on Anderson Kill by Defendant seeks a representative of Anderson Kill to testify on the following matters: (1) Plaintiff; (2) “[t]he consideration and/or decision” by Anderson Kill “to offer partnership and/or employment” to Plaintiff; (3) “[a]ny reviews or evaluations of Schneck’s performance as a partner and/or employee;” (4) “[a]ny communications between Schneck and any partner and/or employee of Anderson regarding Schneck’s departure from Anderson;” (5) “[a]ny negotiation, mediation, arbitration, litigation and/or agreement regarding Schneck’s departure from Anderson,” and (6) Plaintiff’s “medical condition and/or alleged disability.”

The Subpoena also seeks various categories of documents including documents relating to any contract or employment agreement between Anderson Kill and Plaintiff, partnership agreement, any K-1, 1099 forms and or W-2s issued to Plaintiff, distributions or salary provided to Plaintiff, Plaintiff’s billable hours, Plaintiff’s performance reviews, communications regarding Plaintiff’s departure, Plaintiff’s medical condition and/or alleged disability.

CPLR §3101(a) generally provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.”

However, CPLR §3103(a) provides that:

The court may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.

CPLR §2304 empowers to court to quash, fix conditions or modify a subpoena:

It is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding (*see Matter of Terry D.*, 81 NY2d 1042, 1044, 619 NE2d 389, 601 NYS2d 452 [1993]). It is equally well settled that a motion to quash a subpoena duces tecum should be granted only where the materials sought are utterly irrelevant to any proper inquiry (*see New Hampshire Ins. Co. v Varda, Inc.*, 261 AD2d 135, 687 NYS2d 261 [1999]; *Matter of Reuters Ltd. v Dow Jones Telerate*, 231 AD2d 337, 341, 662 NYS2d 450 [1997]). “Moreover, the burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed” (*Gertz v Richards*, 233 AD2d 366, 366, 650 NYS2d 584 [1996]).

(*Velez v. Hunts Point Multi-Serv. Ctr.*, 2006 NY Slip Op 1105, *7 [1st Dept. 2006]).

Here, the Subpoena propounded on Anderson Kill & Olick, P.C., as written, is overly broad.

Wherefore it is hereby

ORDERED that plaintiff's motion to quash the Subpoena served on Anderson Kill & Olick, P.C., is granted; and it is further

ORDERED that defendant's cross motion is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: JANUARY 9, 2014



EILEEN A. RAKOWER, J.S.C.