

Matter of Government Empls. Ins. Co. v Westman

2015 NY Slip Op 32202(U)

May 5, 2015

Supreme Court, Nassau County

Docket Number: 606604-2014

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

_____ x
In the Matter of the Application of GOVERNMENT
EMPLOYEES INSURANCE COMPANY to Stay
Arbitration,

TRIAL/IAS, PART 40
NASSAU COUNTY

Index No. 606604-2014

Petitioner(s),

-against-

KARLEEN WESTMAN and SARAH MANFREDE,
an infant by her parent and natural guardian
KARLEEN WESTMAN,

Motion Seq. No.: 001
Motion Submitted: 3/24/15

Respondent(s),

-and-

INFINITY AUTO INSURANCE COMPANY
SEETARAM RAMPRASHAD and DRIN
RAMPRASHAD,

Proposed Additional Respondent(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Motion by the attorney for the petitioners for an order pursuant to CPLR 7503(c)
granting a temporary stay of arbitration pending a hearing on the issue of whether the
offending vehicle was in fact, "uninsured," and joining the proposed additional

respondents to this proceeding, and directing the respondents to produce a copy of all relevant medical records and authorizations, and to submit to examinations under oath and physical examinations only if, after a hearing, it is determined that respondents are entitled to proceed to arbitration is determined as hereinafter set forth.

This action involves a Demand for Arbitration filed by respondent Karleen Westman and Sarah Manfrede, an infant by her parent and natural guardian Karleen Westman, seeking to recover benefits from petitioner, Government Employees Insurance Company (GEICO) pursuant to the uninsured motorists provision of petitioner's insurance policy. The respondents claim in their Demand for Arbitration that respondents were involved in an automobile accident on July 4, 2014, and that the other vehicle involved in the accident, which was owned by Seetaram Ramprashad and operated by Drin Ramprashad, was uninsured. GEICO has filed the petition seeking a stay of arbitration and to add Infinity, Drin Ramprashad and Seetaram Ramprashad as additional respondents. GEICO alleges that the vehicle owned by Seetaram Ramprashad and operated by Drin Ramprashad was insured on the date of the accident by Infinity. The 2006 Nissan owned by Seetaram Ramprashad was initially insured by Infinity Auto Insurance Company (Infinity) pursuant to a Florida policy of insurance issued on March 18, 2014. Infinity has, pursuant to the terms of the policy and applicable Florida law, rescinded the policy *ab initio* based on alleged fraud and material misrepresentations committed by Seetaram Ramprashad in procuring and maintaining his policy of

insurance. The basis for the rescission of the policy is that during the investigation of this accident, Infinity learned that Seetaram Ramprashad made misrepresentations in his insurance application regarding his home address, the garaging address of the insured vehicles, the drivers of the insured vehicles, and the business use of one of the vehicles. Based on the retroactive rescission of the policy, Infinity deemed the policy to never have been in existence, and the subject 2006 Nissan to be uninsured as of the July 4, 2014 date of the accident.

On August 29, 2014, respondents received a letter from Infinity denying all bodily injury benefits to respondents for an accident that occurred on July 4, 2014.

Infinity's policy of insurance, issued in Florida, lists proposed additional respondent Seetaram Ramprashad as the named insured and lists his residence address and the garaging address of the insured vehicle as 701 Gazelle Way, Kissimmee, Florida. Infinity asserts its investigation revealed that Seetaram Ramprashad did not reside at that address in Florida when he applied for the Infinity policy and the insured 2006 Nissan was not garaged in Florida. Infinity further contends that from the results of the investigation, Seetaram Ramprashad lived in New York at the time he applied for the subject policy and the insured vehicle was principally garaged in South Ozone Park, New York. The Infinity policy only lists Seetaram Ramprashad as an insured driver. On the application for the policy, Seetaram Ramprashad failed to disclose Drin Ramprashad, who Infinity contends was a regular operator of the insured vehicles and an additional member

of the household. Seetaram Ramprashad also did not disclose on his application that he would be using one of the insured vehicles, a Ford Econoline van, for business use. In the course of investigating the subject accident and the facts surrounding Seetaram Ramprashad's application and procurement of the subject insurance policy, Infinity conducted two recorded telephone interviews of Seetaram Ramprashad. Seetaram Ramprashad admitted that when he took the policy out, the insured 2000 Ford Econoline was in New York; when he applied for the subject policy of insurance with Infinity he was still living in New York, but that he planned to move down to Florida, and that although he was staying at the 701 Gazelle Way, Kissimmee, Florida address in January and February 2014, by March 2014 he had gone back to New York and never had access to the 701 Gazelle Way, Kissimmee, Florida address at any time after that. He also admitted that his son regularly used the 2000 Infiniti I30 insured on the policy and occasionally used the subject 2006 Nissan Altima also insured on the policy. Additionally, Seetaram Ramprashad admitted that he used the 2000 Ford Econoline listed on the subject policy for his contractor/home improvement business.

Part of Infinity's policy of insurance provides as follows:

Fraud and Misrepresentation

The statements made by you in the application are deemed to be representations. If any representation contained in the application is false, misleading, or materially affects the acceptance or rating of the risk by us, by either direct misrepresentation, omission, concealment of facts, or incorrect statements, we may void this policy or deny coverage for fraud or misrepresentation even after the occurrence of an

accident or loss. This means that we will not be liable for any claims or damage that would otherwise be covered.

Part F of the policy provides:

Rescission

We retain the right to void this policy from its beginning if we determine that you have provided incomplete, inaccurate or false information in your application.

The courts have applied a “center of gravity” or “grouping of contacts” test in these types of insurance cases and concluded that the law of the State where the policy was issued and where the insured purportedly resided must control. Infinity argues that the law of Florida (Florida Statutes Annotated, Title 37, Section 627.409) that permits retroactive rescission based on fraud and/or misrepresentation should control (*see In Re Liquidation of Midland Ins. Co.*, 16 NY3d 536 [Court held that “center of gravity” or “grouping of contacts” test should apply in determining choice-of-law questions in contract disputes]; *Northland Ins. Co. v Imperial Car Sales*, 2009 WL 2143565 [EDNY 2009] [Court held that New Jersey law applied rather than New York law with respect to retroactive rescission of insurance policy]; *GEICO v Nichols*, 8 AD3d 564 [Court reversed lower court’s holding and found that Florida law applied rather than New York law with respect to retroactive cancellation of insurance policy based on material misrepresentation]; *Eagle Insurance Company v Singletary*, 279 AD2d 56 [Court found that Virginia law applied and retroactive cancellation of policy was valid]; *American Centennial Ins. Co. v Sinkler*, 903 F.Supp 408 [EDNY 1995] [Court held that South

Carolina law applied rather than New York law with respect to *ab initio* rescission of insurance policy]). *MVAIC v Physical Medicine & Rehab of NY*, 31 Misc 3d 1225(A), 2011 WL 1833283 (Sup. Ct. Queens, May 13, 2011) (Court found that Florida Law applied rather than New York law and retroactive cancellation of insurance policy was valid and policy was void *ab initio*).

Florida's significant contacts with the subject contract and legitimate governmental interest in protecting its honest policyholders from bearing the burden of paying claims incurred by dishonest policyholders outweighs New York's governmental interest in protecting innocent third parties from being deprived of insurance coverage, especially since New York statutes provide the means to ensure compensation to persons injured as a result of the fault of uninsured motorists within the state by requiring New York policyholders to purchase uninsured motorist coverage (*see*, Insurance Law § 342[f]) and establishing and providing insurance through MVAIC (*see* Insurance Law § 5201 et seq.; *see also Matter of Eagle Insurance Co. v Singletary*, 279 AD2d 56).

In signing the insurance application on or about March 18, 2014, Seetaram Ramprashad allegedly misrepresented that (1) he resided in Florida; (2) that the insured vehicles would be principally garaged in that State; (3) that he was the only driver and/or resident of his household and (4) that the insured vehicles would not be used for business purposes.

Based on the recorded statements of Seetaram Ramprashad, pursuant to the policy

provisions and Florida Law, Infinity argues there are grounds for rescinding the policy and voiding coverage from its inception based on fraud and/or material misrepresentation.

A hearing is required to determine if in fact Seetaram Ramprashad did commit fraud and misrepresentation, on the issue of offending vehicle coverage, and the right to proceed to arbitration. Facts must be presented by evidentiary proof in admissible form (*Friends of Animals v Associated Fur Mfgs.*, 46 NY2d 1065). The transcript of the telephone conversations, without an accompanying affidavit sworn to by Seetaram Ramprashad, is not sufficient to support the alleged factual allegations put forth by Infinity.

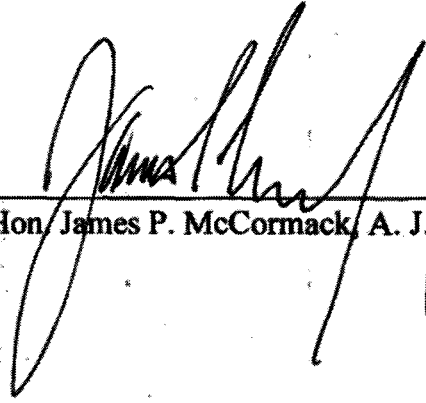
The demanded arbitration is stayed pending resolution of the factual issues raised. Subject to the discretion of the Justice there presiding, this matter shall appear on the calendar of the Calendar Control Part on September 3, 2015. The directive with respect to a hearing is subject to the right of the Justice presiding in CCP to refer the matter to a Justice, Judicial Hearing Officer, or a Court Attorney/Referee, as he or she deems appropriate. Infinity, Seetaram Ramprashad and Drin Ramprashad are added as necessary parties (*see* CPLR 1001) provided petitioner obtains jurisdiction over such parties pursuant to CPLR Art. 3 by service of a copy of this Order and all papers upon which it is based within twenty (20) days after entry. A failure to add such parties may result in a dismissal for the failure to add a necessary party (*see* CPLR 1003). There shall be a response to the petition by the added respondents. Such response shall be served no later

than twenty (20) days after jurisdiction has been obtained. The response by Infinity shall include copies of all documentation and affidavits relied upon in support of the claims of non-coverage. Petitioner shall serve and file a Note of Issue no later than ninety (90) days after entry of this Order in default of which the action shall be deemed abandoned (*see* CPLR 3216). The Note of Issue shall be accompanied by a copy of this Order and proof that jurisdiction has been obtained over all necessary parties and a statement that a copy of such Order has been mailed to all parties to the original petition with fifteen (15) days after entry.

Respondents shall provide medical authorizations to petitioner and appear for physical examinations and examinations under oath, only after the conclusion and determination of the hearing.

The foregoing constitutes the Decision and Order of the Court.

Dated: May 5, 2015
 Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED
 MAY 12 2015
 NASSAU COUNTY
 COUNTY CLERK'S OFFICE