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| High Definition MRI, P.C. v MAPFRE Ins. Co. of N.Y. |
| 2016 NY Slip Op 31336(U) |
| July 14, 2016 |
| Supreme Court, New York County |
| Docket Number: 651039/2013 |
| Judge: Manuel J. Mendez |
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PRESENT: MANUEL J. MENDEZ
Justice

PART 13

HIGH DEFINITION MRI, P.C.,
Plaintiff,

INDEX NO. 651039/2013
MOTION DATE 06/01/2016
MOTION SEQ. NO. 004
MOTION CAL. NO. _____

-against-

MAPFRE INSURANCE COMPANY OF NEW YORK
Defendant.

The following papers, numbered 1 to 6 were read on this motion to reargue.

| | PAPERS NUMBERED |
|---|-----------------|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | <u>1-3</u> |
| Answering Affidavits — Exhibits _____ | <u>4</u> |
| Replying Affidavits _____ | <u>5-6</u> |

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that Plaintiff's motion is granted to the extent stated herein.

Plaintiff commenced this action on March 20, 2013, asserting causes of action for (1) declaratory relief, and (2) breach of contract for Defendant's failure to pay one-hundred and ninety-eight (198) No-fault claims.

On March 11, 2016, This Court granted Defendant's motion under Mot. Seq. 003, severing and dismissing, without prejudice, the Second Cause of action which asserted claims for Breach of Contract, and directed that Plaintiff may re-commence these separate actions for each of the 198 claims asserted in the Second Cause of Action in Civil Court within thirty (30) days from the date of service of the Order. (Mot. Exh. B).

Plaintiff now moves for leave to reargue the motion to sever, and upon reargument to deny the motion to sever and retain jurisdiction of the 91 individual cases (containing the 198 no-fault claims) in Supreme Court for a referee to hear and determine. In the alternative, Plaintiff moves to stay the severance Order pending an appeal, or to toll the statute of limitations to re-commence the Breach of Contract claims in Civil Court to six months. Defendant opposes the motion.

In the Complaint, Plaintiff alleges that the Defendant engaged in a practice of summarily denying payment on Plaintiff's No-Fault claims by improperly basing these denials without a stated reason, or stated various reasons, including that Plaintiff was possibly fraudulently incorporated. The first cause of action seeks, in part, a declaratory judgment that Plaintiff: (1) is/was a properly incorporated business, (2) is entitled to submit No-Fault claims and receive reimbursements, (3) has not engaged in improper conduct making it ineligible to be paid for its services rendered for No-Fault claims, and (4) permanently enjoining Defendant from raising pre-textual defenses related to unpaid

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

claims. The second cause of action claims that the Defendant breached its contractual obligations by wrongfully denying Plaintiff's No-fault claims for pre-textual reasons, including failure to attend EUOS, lack of proper claim documentation, lack of medical necessity, etc.

Plaintiff contends that on the motion to sever this Court misapprehended the relevant facts regarding the relationship between the breach of contract and declaratory judgment causes of action. Specifically, Plaintiff argues that the declaratory judgment cause of action is "inextricably intertwined with the breach of contract cause of action such that the two cannot be resolved separately." Plaintiff contends that the individual breach of contract claims contain common questions of law and fact based on the defendant engaging in a common scheme of failing to fairly and properly review individual no-fault claims, and instead improperly summarily denying all of Plaintiff's claims. Because of Defendant's improper practices, Plaintiff states that the breach of contract claim cannot be efficiently adjudicated until after the issue of Defendant's claim handling issues are resolved in the declaratory judgment action. Plaintiff states that there will be "repetitive adjudication of the issue in multiple civil court cases" if the breach of contract claims are adjudicated before the declaratory judgment action, and this will result in a waste of judicial resources, a risk of inconsistent rulings, and excessive litigation expenses to the parties.

CPLR § 2221(d) states that a motion for leave to Reargue (1) shall be identified specifically as such, (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion, and (3) shall be made within 30 days after service of a copy of the order determining the prior motion and written notice of its entry.

The decision whether to entertain reargument is committed to the sound discretion of the court (*Rostant v. Swersky*, 79 A.D.3d 456, 912 N.Y.S.2d 200 [1st Dept., 2010]). A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*V.Veerewswamy Realty v. Yenom Corp.*, 71 A.D. 3d 874, 895 N.Y.S.2d 860 [2nd. Dept. 2010]), but to point out controlling principles of law or fact that the court may have overlooked (*Simon v. Mehryahi*, 16 A.D. 3d 664, 792 N.Y.S.2d 543 [2nd. Dept. 2005]).

Plaintiff has not provided a basis for reargument of this Court's March 11, 2016 Order by failing to state matters of law or fact that were overlooked or misapprehended.

In considering the motion to sever, this Court found that the claims involved "different assignors who were treated on different dates, were involved in different accidents, that occurred on different dates" with the claims having been submitted on different dates and subsequently denied for different reasons. (Mot. Ex. B). Plaintiff's statement that the breach of contract cause of action cannot be decided without first deciding the declaratory relief is unavailing. Even assuming that this Court finds in favor of the Plaintiff on the declaratory relief, this would not provide a basis for finding that the Defendant breached its contractual obligations. Each individual claim that the Plaintiff sued on would still need a separate adjudication based on why these no-fault claims were initially

denied. Whether or not this Court declares that Plaintiff was not fraudulently incorporated and in fact was engaging in proper practices, does not summarily decide whether Defendant properly denied a claim based on the fact that the insured failed to appear for an EUO, or whether or not the insured had a legitimate claim in the first place.

Alternatively, Plaintiff requests a stay of this Court's March 11, 2016 severance Order under CPLR §2201 pending adjudication of the declaratory judgment cause of action and under CPLR §5519(c) pending appeal, or a six month tolling of the statute of limitations provided under CPLR §205(a).

CPLR §2201 states "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." "It is appropriate to stay an action in deference to another only where the determination in the other will resolve all of the issues in the stayed action and the judgment on one trial will dispose of the controversy in both actions." *Mt. McKinley Ins. Co. v. Corning Inc.*, 33 A.D.3d 51, 818 N.Y.S.2d 73 [1st Dept. 2006], *Somoza v. Pechnik*, 3 A.D.3d 394, 772 N.Y.S.2d 2 [1st Dept. 2004]].

A stay of this Court's Order directing the Plaintiff to commence the breach of contract claims in civil court pending an adjudication on the declaratory judgment cause of action is not warranted here. As stated above, an adjudication on the declaratory judgment cause of action, even in Plaintiff's favor, does not and would not resolve all of the issues, or controversies on the breach of contract claims because not every no-fault claim was denied by Defendant for the same reason.

CPLR §5519(c) states in part that, "The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal..." A stay under this subsection is within the discretion of the Court. (*Schwartz v. New York City Housing Authority*, 219 A.D.2d 47, 641 N.Y.S.2d 885 [2nd Dept. 1996]).

A stay under §5519(c) of this Court's March 11, 2016 Order directing Plaintiff to re-commence the breach of contract claims within 30 days is also not warranted here. Rather, Plaintiff correctly cites the six month tolling statute to recommence an action after dismissal under CPLR §205(a).

CPLR §205(a) provides in part that, "If an action is timely commenced and is terminated in any other manner than by voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff...may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period."

The Second Cause of Action for Breach of Contract was severed and dismissed by this Court without prejudice to re-file the claims in Civil Court. The action had been timely commenced and the Plaintiff had obtained personal jurisdiction over the defendant. Therefore, the court is granting that portion of the motion that seeks to extend the time to commence the action in Civil Court under CPLR §205(a). The Plaintiff has six months from the date of this Court's March 11, 2016 Order to re-commence the Breach of Contract claims in Civil Court.


Accordingly, it is Ordered that Plaintiff's motion for leave to reargue, or in the alternative to stay this Court's March 11, 2016 severance Order is granted to the extent of tolling Plaintiff's time to re-commence the Breach of Contract claims in the Civil Court to six months from the date of this Order and it is further,

ORDERED, that Plaintiff may re-commence separate actions for each of the 198 claims asserted in its Second Cause of Action for Breach of Contract claims within six months from the date of service of a copy of this Order, and it is further,

ORDERED, that Plaintiff shall serve a copy of this Order with Notice of Entry upon Defendant within twenty (20) days from the date of entry of this Order.

Enter:

Dated: July 14, 2016



 MANUEL J. MENDEZ
 J.S.C.

MANUEL J. MENDEZ
 J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE