

Neiditch v William Penn Life Ins. Co. of N.Y.
2016 NY Slip Op 32785(U)
April 15, 2016
Supreme Court, Nassau County
Docket Number: 600332/14
Judge: Jeffrey S. Brown
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 13
CYNTHIA NEIDITCH,

Plaintiff(s),

INDEX # 600332/14

Mot. Seq. 3

-against-

Mot. Date 3.29.16

Submit Date 3.29.16

THE WILLIAM PENN LIFE INSURANCE COMPANY
OF NEW YORK,

Defendant(s).

-----X

The following papers were read on this motion:	Papers Numbered
Notice of Motion, Affidavits (Affirmations), Memo of Law.....	1,2
Memorandum of Law	3

Defendant, The William Penn Life Insurance Company of New York (William Penn), moves by order to show cause for an order pursuant to CPLR 2221, granting leave to reargue and reconsider the decision and order of this court (Brown, J., Feb. 3, 2016).

This is an action to recover the proceeds of a policy of life insurance. Plaintiff's complaint alleges that on June 8, 2012, defendant issued a life insurance policy to Gary Rachlin, naming plaintiff as beneficiary. After Rachlin's death on November 23, 2012, plaintiff made a claim for the proceeds of the policy, which was denied by defendant. The denial was based on Rachlin's failure to disclose his hospitalization in June 2011 for an allergic reaction and numerous episodes of anaphylaxis with hospitalizations due to severe allergies. The complaint contains a single cause of action seeking a declaratory judgment that defendant breached its

contract. Defendant's answer includes an affirmative defense that if the representations of Rachlin in his application for life insurance had been complete and accurate, defendant would not have issued the subject life insurance policy.

This court's February 3, 2016 decision determined and held the following:

"Defendant has sufficiently demonstrated that the search required to produce all documents responsive to plaintiff's third notice for discovery and inspection would be impracticable and unduly burdensome. Therefore, dismissal of defendant's amended answer pursuant to CPLR 3126(3) is unwarranted. However, since defendant claims that it cannot produce insurance applications and insurance policies for "similarly situated" applicants and insureds to Rachlin who were either denied coverage, had coverage cancelled during the contestability period, or were granted coverage by defendant, then defendant shall be precluded from relying upon any such documents in support of or in opposition to any motion for summary judgment in this matter or at the trial of this matter (CPLR 3126[2]).

Accordingly, plaintiff's motion is granted to the extent that defendant is hereby precluded from offering insurance applications and insurance policies for "similarly situated" applicants and insureds to Rachlin who were either denied coverage, had coverage cancelled during the contestability period, or were granted coverage by defendant, in support of or in opposition to any motion for summary judgment in this matter or at the trial of this matter unless such documents are produced to plaintiff's counsel within thirty (30) days of the date of this order. The motion is otherwise denied." (Brown, J.)

Defendant now moves to reargue only that portion of the decision which pertains to the use of documents at the trial or on a motion for summary judgment. Defendant contends that no discovery sanction should have been imposed against defendant "since William Penn fully complied with its obligation to respond to the plaintiff's Third Notice for Discovery & Inspection." Defendant further asserts that the motion should have been denied and all issues concerning the admissibility of evidence at trial or on a motion for summary judgment should have been reserved for the time when any such issue may arise.

Defendant clearly concedes in its subject motion papers exactly what this court ordered to be precluded, specifically stating in its memorandum of law that "William Penn has represented that it will not (to adopt the language of the decision and order) offer into evidence 'insurance applications and insurance policies for 'similarly situated' applicants and insureds to Rachlin

who were either denied coverage, had coverage cancelled during the contestability period, or were granted coverage by defendant, in support of or in opposition to any motion for summary judgment in this matter or at the trial of the matter.” Defendant, however, requests that the decision be modified to delete any reference to CPLR 3126, or to “other William Penn files.” Defendant further concedes that “William Pen has no intention of establishing its underwriting practices other than through the testimony of an underwriter and the use of the relevant section of the underwriting manual.”

Plaintiff opposes, arguing that defendant has failed to point to a single fact or law that this court misapprehended or misunderstood; rather, defendant takes issue with the verbiage of this order and has made this instant motion to ask the court to clarify its directive set forth in the order. Plaintiff further asserts that defendant has taken the impossible and illogical position that it should not and cannot produce documents to plaintiff, yet it should not be precluded from using such documents at trial or in support of a motion for summary judgment. Plaintiff also calls the instant motion unnecessary.

A motion to reargue is addressed to the discretion of the court and is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law (CPLR 2221[d][2]; (see, *Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). It is not designed as a vehicle to afford the unsuccessful party with successive opportunities to argue once again the very questions previously decided, or to present arguments different from those originally presented (*Gellert & Rodner v. Gem Community Mgt., Inc.*, 20 AD3d 388 [2nd Dept. 2005]). Nor is it designed to provide an opportunity for a party to advance arguments different from those originally tendered (*Amato v. Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2nd Dept. 2004]) or argue a new theory of law or raise new questions not previously advanced (*Levi v. Utica First Ins. Co.*, 12 AD3d 256, 258 [1st Dept. 2004]; *Frisenda v. X Large Enterprises, Inc.*, 280 AD2d 514, 515 [2nd Dept. 2001]). Instead, the movant must demonstrate the matters of fact or law that he or she believes the court has misapprehended or overlooked (*Hoffmann v. Debello-Tehey*, 27 AD3d 743 [2nd Dept. 2006]). Absent a showing of misapprehension or the overlooking of a fact, the court must deny the motion (*Barrett v. Jeannot*, 18 AD3d 679 [2nd Dept. 2005]). Further, a motion to reargue is based solely upon the papers submitted in connection with the prior motion. New facts may not be submitted or considered by the court (*James v. Nestor*, 120 AD2d 442 [1st Dept. 1986]; *Philips v. Village of Oriskany*, 57 AD2d 110 [4th Dept. 1997]).

Defendant did not demonstrate that the court overlooked or misapprehended any relevant facts or misapplied any controlling principle of law in its February 3, 2016 decision. Motions to reargue are not designed as a vehicle to afford the unsuccessful party with successive opportunities to argue once again the very questions previously decided, as defendant does in the instant motion. This court’s February 3, 2016 order was thorough and quite clearly stated. Therefore, defendants’s application is **DENIED**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
April 15, 2016

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

Attorney for Plaintiff
Weg & Myers, PC
Federal Plaza
52 Duane Street
New York, NY 10007
212-227-4210
gsantangelo@wegandmyers.com

ENTERED

APR 20 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Attorney for Defendant
Bleakley Platt & Schmidt, LLP
One North Lexington Avenue
PO Box 5056
White Plains, NY 10602-5056
914-949-2700
9146836956@fax.nycourts.gov
rmeade@bpslaw.com