

Gibbs v Navarro

2016 NY Slip Op 33124(U)

February 22, 2016

Supreme Court, Westchester County

Docket Number: 62312/2014

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
SANDRA C. GIBBS,

Plaintiff,

DECISION & ORDER

-against-

Index No. 62312/2014
Motion Date: Feb. 22, 2016

MANUEL A. NAVARRO,

Seq. No. 1

Defendant.

-----X
LEFKOWITZ, J.

The following papers were read on this motion by defendant for a protective order pursuant to CPLR 3103 preventing plaintiff from obtaining defendant's homeowner's insurance policy.

- Order to Show Cause - Affirmation in Support - Exhibits A-B
- Affirmation in Opposition -Exhibits 1- 10

Upon the foregoing papers and the proceedings held on February 22, 2016, this motion is determined as follows:

This action arises out of an automobile accident which occurred on October 27, 2013. Plaintiff commenced the action by the filing of a summons and verified complaint on August 7, 2014, alleging that she suffered serious injuries when her automobile was rear ended by defendant's automobile. Issue was joined when defendant served his answer on September 8, 2014.

On April 7, 2015 the parties appeared for a preliminary conference. The Preliminary Conference Stipulation which was so ordered by this Court (Connolly, J.) directed, among other things, that "defendant shall disclose in writing the existence and contents of any insurance agreement as described in CPLR 3101 on or before May 15, 2015."

On September 8, 2015, defendant produced three automobile insurance policies.

Plaintiff's deposition occurred on September 25, 2015. The parties appeared for a compliance conference on October 6, 2015. The Court Attorney-Referee's Report and Order

which issued from that conference directed, among other things, that plaintiff serve any post-deposition discovery demands by November 3, 2015, and that any responses to those demands were due to plaintiff's counsel in hand by close of business on December 1, 2015.

On November 3, 2015, plaintiff faxed plaintiff's demand for discovery and inspection to defendant. Plaintiff's demand sought "any and all policies of insurance held in the name of Sandra A. Navarro and/or Manuel A. Navarro ... including, but not limited to, an umbrella or excess or catastrophic motor vehicle liability policy, homeowner's policy... at the time of the October 27, 2013 accident."

The parties appeared for a compliance conference on November 5, 2015. The Court Attorney-Referee's Report and Order which issued from that conference directed that defendant serve his responses to plaintiff's discovery demands so as to be received in hand by plaintiff by close of business on December 1, 2015.

When the parties appeared for a compliance conference on December 3, 2015, defense counsel asserted she had not received plaintiff's post-deposition discovery demands and that she was unsure whether defendant had any insurance policies other than the automobile policies produced on September 8, 2015. Defense counsel further asserted that defendant would not produce any policies other than those already produced. The Court Attorney-Referee Report and Order from that conference directed plaintiff to email a courtesy copy of plaintiff's post-deposition discovery demands so as to be received by defendant by close of business that day. The Order further directed that defendant respond to plaintiff's discovery demands by close of business on December 18, 2015, and stated "**This deadline will not be extended**" (emphasis in original).

On December 22, 2015, the parties appeared for a compliance conference at which time defense counsel advised that defendant possessed a homeowner's insurance policy but refused to produce the policy. A briefing schedule for this motion was then issued to defendant.

In support of the motion defense counsel avers that she has carefully reviewed defendant's homeowner's insurance policy and contends that what she deems to be the relevant portions of defendant's insurance policy exclude damages for bodily injuries arising out of the ownership of any motor vehicle. It is counsel's conclusion that these damages are excluded from coverage and therefore defendant's homeowner policy is not discoverable. Alternatively, counsel offers to provide the policy to the Court for review in camera.

In opposition plaintiff's counsel argues that pursuant to CPLR 3101(f) plaintiff is entitled to discovery of all insurance policies held by defendant on the date of the accident. Plaintiff argues that defendant's motion should be denied because protective orders are designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice and the homeowner's insurance policy does not fall under any of these categories but rather is discovery that parties are required to produce pursuant to CPLR 3101 (f). Lastly, plaintiff argues that the motion should also be denied on the grounds that defendant has failed to provide an

affirmation of good faith as required by 22 NYCRR 202.7(a) and as suggested by the commentary to CPLR 3103(a).

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

CPLR 3101(f) provides “[a] party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.” The statute is intended to accelerate settlement of claims by providing the plaintiff the knowledge of the limits of the defendant’s liability policy (*Bolton v Weil, Gotshal & Manges LLP*, 14 Misc 3d 1220[A], 2005 Slip. Op. 52329[U] [Sup Ct, NY County 2005][additional citations omitted]). “In keeping with this policy and based on the language of 3101(f), courts have required defendants to provide a certified or true copy of the insurance policies demanded by the plaintiff” (*Id.*).

Defendant does not argue that producing the insurance policy would create unreasonable annoyance, expense, embarrassment, disadvantage or any other prejudice to defendant. Nor does defendant argue that CPLR 3101(f) is somehow inapplicable to this case. The Court notes that it is not required to rely on defendant’s determination that the subject policy is inapplicable. In light of the foregoing, defendant has failed to demonstrate his entitlement to a protective order and accordingly, defendant’s motion must be denied.

In view of the foregoing, it is

ORDERED that defendant’s motion for a protective order is denied; and it is further

ORDERED that defendant shall produce to plaintiff on or before March 1, 2016, a true copy of any homeowner’s insurance policies held by defendant, or other name used by him, singly or jointly, or in which he has a legal, equitable or economic interest which was in effect at

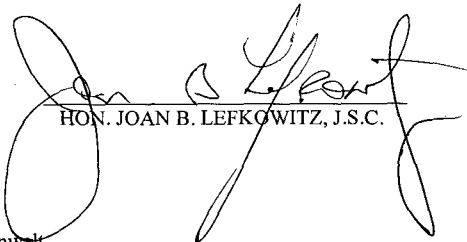
the time of the October 27, 2013 motor vehicle accident; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon plaintiff within ten days of entry; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on March 7, 2016 at 9:30 a.m. at which time it is anticipated that this matter will be certified as ready for trial.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
February 22, 2016



HON. JOAN B. LEFKOWITZ, J.S.C.

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