

Ameriprise Ins. Co. v Sandy
2017 NY Slip Op 30810(U)
April 19, 2017
Supreme Court, New York County
Docket Number: 154816/2015
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

-----X
AMERIPRISE INSURANCE COMPANY,

Plaintiff,

DECISION & ORDER
Index No. 154816/2015

-against-

Mot. Seq. 002

ORAL SANDY, MARK GOLDBERG PROSTHETIC & ORTHOTIC
LABS, INC., HILLSIDE CHIROPRACTIC, P.C., TJH MEDICAL
SERVICES, P.C., ROBERT Y, PICK, M.D., MPH, INNOVATIVE
MEDICAL HEALTHCARE, P.C., REVITALIZING MASSAGE
THERAPY, P.C., PHILIP DP ABESSINIO, D.C., ALLEN ROTHPEARL
IMAGING M.D., P.C., UNITED NYC MEDICAL ASSOCIATES LLC,
W.J.W. MEDICAL, PRODUCTS, INC., JAGGA ALLURI, M.D., THE
NEW YORK COMMUNITY HOSPITAL OF BROOKLYN, INC., THE
JAMAICA HOSPITAL

Defendants.

-----X
The motion, brought by order to show cause, for a temporary restraining order, a
preliminary injunction and a stay of related arbitration proceedings relating to defendant Oral
Sandy's car accident and regarding pending or future no-fault bills or to provide any coverage is
denied.

Background

This declaratory judgment action relates to a car accident involving defendant Oral Sandy
on May 4, 2014.¹ Sandy was driving that night on the Nassau Expressway in Queens, New York

¹The Court observes that this motion focuses on defendant Sandy although there are many
defendants in this matter. Plaintiff has reached a settlement with some defendants (*see e.g.*,
NYSCEF Doc No. 8) and successfully sought default judgments against others (*see* NYSCEF
Doc. No. 61).

and was involved in a car accident around 3:30 a.m. Plaintiff argues that it should not have to provide coverage to its insured (defendant Sandy) because Sandy was intoxicated at the time of the accident. Plaintiff also disputes Sandy's account that there was another vehicle involved in the crash that later drove away from the accident scene.

Plaintiff claims that defendant Sandy appeared for an Examination Under Oath (EUO) and that his wife and Erica Dick (Sandy's mistress) both appeared for depositions. Plaintiff insists that each witness' accounts of the night of the incident contradict each other. Plaintiff concludes that the accident was not a covered event but rather the result of Sandy's operating a car while intoxicated and possibly under the influence of drugs.

Plaintiff argues that its automobile insurance policy excludes coverage for accidents that occur while the insured is under the influence of alcohol. Plaintiff notes that Sandy's blood alcohol level was 0.24, three times the legal limit in New York. Plaintiff also contends that Sandy misrepresented how the accident occurred in order to receive coverage. Plaintiff claims that Sandy testified that his car was hit from behind by a mysterious vehicle but that there is no evidence to show the car was hit in the rear. Plaintiff insists it need not provide coverage for an insured who makes false statements while making a claim under his or her insurance policy.

In opposition, Sandy observes that plaintiff previously sought a stay of the arbitration in Queens County but that application was denied. Sandy insists that plaintiff should appeal that ruling rather than bring the same claim in this Court. Sandy insists that its claim for uninsured motorist benefits should proceed in arbitration because there is a valid agreement to arbitrate. Sandy argues that there is only one pending suit—the instant declaratory judgment action and that the arbitrator can decide questions of fault and damages.

In reply, plaintiff insists that its proceeding in Queens County (a petition to stay arbitration) was entirely different from the instant action. Plaintiff argues that the Queens court dismissed the proceeding on procedural grounds and did not address the merits of that petition. Plaintiff contends that Sandy did not contest plaintiff's showing of irreparable harm or likely success on the merits. Plaintiff maintains that Sandy can proceed to arbitrate if the Court rules against plaintiff.

Discussion

"A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party" (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citations omitted]).

Plaintiff's curious litigation strategy in the instant matter asks this Court to weigh plaintiff's right to bring a declaratory judgment action against Sandy's right to arbitrate. As an initial matter, Sandy is clearly entitled to arbitrate.

The arbitration provision of Sandy's insurance policy provides that:

"If any insured making claim under this SUM [Supplementary Uninsured/Underinsured Motorists] coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the

American Arbitration Association, pursuant to procedures prescribed or approved by the Superintendent of Insurance for this purpose.”

(affirmation in opposition, exh C at 125).

Here, Sandy and plaintiff clearly have a disagreement about Sandy’s coverage and Sandy demanded the SUM benefits. Therefore, Sandy is entitled to go to arbitration to resolve this disagreement. Plaintiff fails to provide a convincing argument to circumvent this clear and unambiguous arbitration provision. Plaintiff will have the opportunity to argue before the arbitrator that it need not provide coverage, that Sandy was drunk, and its theory that Sandy lied about being hit by another vehicle on May 4, 2014. The arbitrator will be tasked with deciding whether or not Sandy is entitled to his claimed SUM benefits.

Of course, plaintiff is correct that it can seek a declaratory judgment on this issue, but that does not mean that it is entitled to a permanent injunction staying the arbitration. What would be the purpose of this arbitration provision if plaintiff could ignore an arbitration simply because it believed it did not have to provide coverage? Plaintiff is effectively asking this Court to rewrite the arbitration provision contained in its own insurance policy by creating an exception for instances where plaintiff denies coverage.. This Court has no interest in doing that.

Instead of bringing a petition to permanently stay the underlying arbitration, plaintiff brings a order to show cause seeking a preliminary injunction.² Although plaintiff has demonstrated a likelihood of success on the merits by detailing Sandy’s purported intoxication, it

²Plaintiff made a prior unsuccessful attempt to permanently stay the arbitration by bringing an Article 75 petition in Queens. In that proceeding, Justice Raffaele ruled that plaintiff failed to timely commence its petition because it waited until February 12, 2016 to bring the petition despite receiving the demand to arbitrate on November 8, 2016. Here, plaintiff seeks substantially the same relief, a stay of the arbitration, by requesting declaratory relief.

failed to demonstrate irreparable harm. Plaintiff claims it would be forced to expend resources to defend itself in the arbitration and to litigate the same issues in both this litigation and the arbitration. Plaintiff fears that there would be inconsistent decisions. Plaintiff also refers to 'potential person injury' lawsuits.

Hiring lawyers to present its case in an arbitration specifically provided for *in its own* insurance policy does not constitute irreparable harm. Plaintiff does not deny the validity of this arbitration provision or argue that the arbitrator is unable to decide whether plaintiff must provide coverage. Further, plaintiff cannot manufacture the risk of inconsistent decisions by initiating two matters despite allowing insureds, like Sandy, to seek arbitration. If plaintiff wants to prevent insured from utilizing arbitration, then it should remove the arbitration provisions from its policies. Under these circumstances, the extraordinary remedy of a preliminary injunction is not appropriate.

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied.

The conference currently scheduled for July 11, 2017 is adjourned to September 19, 2017 at 2:30 p.m. to allow the arbitration to proceed.

This is the Decision and Order of the Court.

Dated: April 19, 2017
New York, New York



HON. ARLENE P. BLUTH, JSC