

Otsego Mut. Fire Ins. Co. v Dinerman
2017 NY Slip Op 31958(U)
September 14, 2017
Supreme Court, New York County
Docket Number: 158600/2015
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 37

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OTSEGO MUTUAL FIRE INSURANCE COMPANY,

Plaintiff,

Index No. 158600/2015

- against -

DECISION & ORDER

(Motion Seq. 004)

SALLY DINERMAN, IRA DINERMAN, TOWER
INSURANCE COMPANY OF NEW YORK and
TRAVCO INSURANCE COMPANY,

Defendants.
-----X

ARTHUR F. ENGORON, J.:

This action arises out of a fire that occurred on March 14, 2014 in the home of defendants Sally and Ira Dinerman, located at 1139 East 13th Street, Brooklyn, New York. Plaintiff Otsego Mutual Fire Insurance Company (Otsego) had issued a homeowner's insurance policy to Sally Dinerman, the record owner of the premises, and, after the fire, paid certain benefits to her. Sally now moves, pursuant to CPLR 2221(d), for leave to reargue and renew this Court's Decision, Order and Judgment, dated April 20, 2017 and entered April 28, 2017 (the Judgment), familiarity with which will be presumed. The Judgment, inter alia, granted Otsego's motion for summary judgment in its favor, and declared that Sally violated the policy's "Misrepresentation, Concealment or Fraud" clause,

rendering the policy void in its entirety so that Sally forfeited all policy coverages, payments and benefits.

“A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principal of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]). “A motion to renew under CPLR 2221, on the other hand, is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], citing *Matter of Weinberg*, 132 AD2d 190, 209-210 [1st Dept 1987]).

Reargument is denied. This Court firmly believes that it did not overlook any of the material facts or relevant law in rendering the Judgment, particularly the typewritten affidavit of Ruth Ofer (*see* Judgment at 10). Otsego sufficiently proved, as a matter of law, based on the documentary evidence and the testimony of Sally, Ira, and the claims adjuster, that Sally willfully and intentionally submitted false and fraudulent rent receipts for additional living expenses after the

fire, for the months of October 2014 through March 2015, and that these misrepresentations were a material breach of the policy.

In support of her motion for renewal, Sally, now represented by counsel, offers an affidavit from a psychologist contending that Sally has mental problems that interfere with her cognition and thought processes. Sally also offers her own affidavit, by which she alludes to a history of mental problems and claims that she never intended to defraud Otsego regarding the rent receipts she submitted for Ruth Ofer's apartment.

Renewal is also denied. Counsel argues that Sally was not capable of adequately representing herself in defending against Otsego's summary judgment motion, and thus the Court must consider this new evidence. However, Sally had a prior opportunity to explain any mental disability or any good faith basis for her actions regarding her claim for additional living expenses, that being her examination under oath, held on May 28, 2015, when she was represented by legal counsel. Rather than offering such evidence, Sally squarely admitted that two of the purported rent receipts from Ruth Ofer were fraudulent, and admitted that what she had done was not "right" (*see* Judgment at 6). The transcript of her testimony did not indicate that she was mentally incapable of understanding and answering counsel's questions. Furthermore, Sally's new submissions fail to rebut the fact that she and Ira had settled their household into new quarters, namely the house

that Sally also owned at 1141 East 13th Street, as of September 15, 2014, and thus were no longer eligible to receive reimbursement for "reasonable and necessary" living expenses for post-fire temporary housing under Coverage D of the policy.

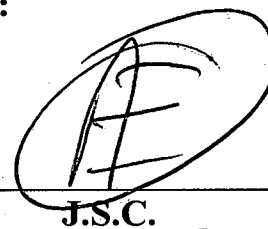
This court also finds, as a matter of law, that the amount by which defendant Sally Dinerman defrauded plaintiff, to wit, several thousand dollars, is not de minimis, and that plaintiff's actions have not rendered the contract unconscionable, despite defendant's counsel's vociferous, if highly ironic, arguments to the contrary in court.

For these reasons, it is hereby

ORDERED that defendant Sally Dinerman's motion to reargue and renew the court's Decision, Order and Judgment, dated April 20, 2017 and entered April 28, 2017, is hereby denied.

Dated: September 14, 2017

ENTER:



J.S.C.

Arthur Engoron