

Leon v Waldman

2018 NY Slip Op 30483(U)

March 21, 2018

Supreme Court, New York County

Docket Number: 805271/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Fani Leon and Odalis Reynoso,
Plaintiffs,

Index No.
805271/2014

- against -

Decision and
Order

Michael Waldman, M.D., Michael Waldman, M.D.,
P.C., and Doshi Diagnostic Imaging Services, P.C.,

Mot. Seq. 1, 2

Defendants.

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Plaintiffs Fani Leon (“Leon”) and Odalis Reynoso (collectively, “plaintiffs”) moved by Order to Show Cause pursuant to CPLR § 5003-a to enforce the settlement of this action (Mot. Seq. #1).

Defendants Michael Waldman, M.D. (“Dr. Waldman”), and Doshi Diagnostic Imaging Services, P.C. (“Doshi”) (collectively, “Defendants”) move by Order to Show Cause pursuant to CPLR § 2201 and the Full Faith and Credit Clause of the United States Constitution to stay the action in accordance with the “Order Commencing Liquidation Proceedings & Granting an Injunction & Automatic Stay of Proceedings,” entered by the Court of Common Pleas, Fifth Judicial Circuit of the State of South Carolina, Richmond County, on September 21, 2017 (“the South Carolina Liquidation Order”). (Mot. Seq. #2). Defendants also seek dismissal of all claims against Dr. Waldman in his personal capacity and to enjoin any attempts to enforce the parties’ settlement against him. (Mot. Seq. #2).

BACKGROUND

This medical malpractice action was commenced on August 8, 2014, and arises out of the alleged failure by one of the radiologists at Doshi to properly read and interpret an ultrasound examination of Leon’s breast, resulting in a delay of approximately one year in the diagnosis and treatment of her breast cancer.

On May 25, 2017, the matter was mediated. On the same date, the parties settled the action as to Doshi for a total of \$275,000.00, to be paid via an insurance policy that Doshi maintained with Oceanus Insurance (“Oceanus”), a South Carolina Risk Retention Group. The settlement provided that all payments are to be made pursuant to CPLR and that plaintiffs will discontinue the action with prejudice against Dr. Waldman. Plaintiffs, in anticipation of payment from Oceanus, subsequently provided general releases to Doshi and Oceanus. However, after the parties settled the matter and prior to Oceanus making the settlement payment to plaintiffs, Oceanus filed for Liquidation on August 29, 2017 in South Carolina. On September 21, 2017, the Court of Common Pleas, Fifth Judicial Circuit of the State of South Carolina, Richmond County, entered the South Carolina Liquidation Order. The Order directs the commencement of liquidation proceedings and prohibits, *inter alia*, the “waste of the insurer’s assets,” “[t]he institution or further prosecution of any actions or proceedings,” “obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders,” “levying of execution against the insurer, its assets, or its policyholders,” and “[a]ny other threatened or contemplated action that might lessen the value of the insurer’s assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under Chapter 27 of Title 38 of the South Carolina Code.”

On October 31, 2017, plaintiffs filed a Proof of Claim with the South Carolina Liquidator for the full amount of the settlement. On February 8, 2018, the South Carolina Court issued an “Order of Clarification” clarifying the September 21, 2017 Order and confirming “that the automatic stay prohibiting the institution of further prosecutions of any actions or proceedings includes prohibiting actions or proceedings against the policyholders, covered providers and additional named insureds of Oceanus Insurance Company.”

Pending Motions

On September 21, 2017, plaintiffs filed an Order to Show Cause pursuant to CPLR 5003-a to enforce the settlement of this action, direct Doshi or Oceanus to make immediate payment of the same, and to vacate the filing of the Stipulation of Discontinuance until the payment was made. Defendants opposed and argued that the action should be stayed pursuant to the South Carolina Liquidation Order.

On January 2, 2018, the return date of the motion, the Stipulation of Discontinuance was vacated. The case and the motion was adjourned for a status conference on January 30, 2018. At the status conference, Defendants advised the

court that they would be making a motion to stay the action. The court advised the parties that Dr. Waldman should appear at the next court appearance.

On February 16, 2018, Defendants filed an Order to Show Cause pursuant to CPLR 2201 and the Full Faith and Credit Clause of the United States Constitution to stay the action in accordance with the South Carolina Liquidation Order. Defendants also seek dismissal of all claims against Dr. Waldman in his personal capacity and to enjoin any attempts to enforce the parties' settlement against him. Plaintiffs oppose the imposition of a stay. Plaintiffs also argue that agreement to discontinue against Dr. Waldman was premised on a \$275,000 settlement, and since that settlement is now in flux because of the liquidation proceedings, dismissal as to Dr. Waldman would be inappropriate.

Relevant Law

Stay

CPLR § 2201 provides, "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."

Full Faith and Credit

"In accordance with the Full Faith and Credit Clause, a "judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." *O'Connell v. Corcoran*, 1 N.Y.3d 179, 184 (2003). New York courts have stayed actions that were commenced against an insolvent insurer or their insured based on the Full Faith and Credit Clause. These courts have held that "stay by a court in another state enjoining and restraining all claims against insureds of an insolvent liability insurer is entitled to full faith and credit, and has the effect of suspending all proceedings against the insured as of its effective date." *See Dambrot v. REJ Long Beach, LLC*, 39 A.D.3d 797 (2d Dep't 2007); *Beecher v Lewis Press Co.*, 238 A.D.2d 927, 927-928 (4th Dep't 1997) (holding that the "Supreme Court erred in failing to give full faith and credit (US Const, art IV, § 1) to an order of Superior Court of the State of Rhode Island that enjoined and restrained until further order of that court all claims against any assured of Canadian Universal Insurance Company Ltd (CUIC) . . ."). *See also Grace v. Castlepoint Ins. Co.*, 54 Misc 3d 1205(A), 50 N.Y.S.3d 25, 2017 NY Slip Op 50005[U] (Supreme Court, Kings

Co.); *25 Bay Terrace Assoc., L.P. v Public Serv. Mut. Ins. Co.*, 2017 NY Slip Op 50653(U) (Supreme Court, Richmond County) (held that the Order of the Illinois court was entitled to full faith and credit, and any further prosecution of the New York litigation against the insolvent insurer was stayed.).

Doctrine of Comity

“The doctrine of comity is not a rule of law, but one of practice, convenience and expediency.” *Boudreaux v. State of Louisiana, Dept. of Transp.*, 49 A.D.3d 238, 241, *aff’d sub nom.*, 11 N.Y.3d 321 (2008). “It is not a mandate, but a voluntary decision to defer to the laws and policies of a sister state.” (*Boudreaux*, 49 A.D. 3d at 241). New York courts have extended comity to other states and stayed New York proceedings against delinquent defendant insurers during the pendency of out of state delinquency proceedings. *A.B. Med. Services PLLC v. Highlands Ins. Co.*, 4 Misc. 3d 1020(A), 791 N.Y.S.2d 867 (Civ. Ct. 2004).

Uniform Insurers Liquidation Act.

New York has adopted the Uniform Insurers Liquidation Act (“UILA”), which governs proceedings against delinquent insurers. (N.Y. Insurance Law § 7408-7415). The Act’s purpose is to provide “a uniform system for the orderly and equitable administration of the assets and liabilities of defunct multi-state insurers” *Levin v National Colonial Ins. Co.*, 1 NY3d 350, 356 [2004]. It is intended to promote “the paramount interest of various States in seeing that insurance companies domiciled within their respective boundaries are liquidated in a uniform, orderly and equitable manner without interference from external tribunals.” *G. C. Murphy Co. v. Reserve Ins. Co.*, 54 N.Y.2d 69, 81 (1981).

The UILA defines a delinquency proceeding as “any proceeding commenced against an insurer for the purposes of liquidating, rehabilitating, reorganizing, or conserving such insurer.” (N.Y. Insurance Law §7408 [b][2]). A liquidation proceeding therefore falls within the definition of a “delinquency proceeding.” (N.Y. Insurance Law § 7408 [b][2]).

The UILA provides, “In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants residing in this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver.” (N.Y. Insurance Law §7411 [a]). “Thus, when an insurer is undergoing liquidation in a ‘reciprocal state’ and no ancillary receiver has been appointed in New York, a New York court cannot adjudicate an action brought

against the insurer; instead, the would-be plaintiff must file a claim in the out-of-state liquidation proceeding.” *Maleski v. Landberg*, 93 CIV. 5318 (JSM), 1995 WL 10838, at *1 (S.D.N.Y. Jan. 12, 1995) (citations omitted). The Act further provides: “During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets.” (N.Y. Insurance Law § 7414).

The term “reciprocal state” is defined under the UILA as “any state other than this state in which in substance and effect the provisions of this act are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.” (N.Y. Insurance Law § 7408[b][6]). To be a “reciprocal state” under the UILA, “the state must have insurance laws similar ‘in substance and effect,’ but not necessarily identical to the UILA.” *A.B. Med. Services PLLC v. Highlands Ins. Co.*, 4 Misc. 3d 1020(A), 791 N.Y.S.2d 867 (Civ. Ct. 2004)] (citations omitted).

In *Smalls v. Weed*, 293 S.C. 364 (S.C. Ct. of App. 1987), the South Carolina Court recognized that South Carolina is a “reciprocal state” under the UILA. As such, Defendants argue that South Carolina, as Oceanus’ domiciliary state, has authority over all of the insolvent insurer’s assets, including those located in New York, and New York courts should not interfere with the South Carolina proceedings under the UILA.

Discussion

Plaintiffs commenced this action against Doshi and Dr. Waldman. Oceanus is not a party to this action. However, plaintiffs seek to enforce the settlement against both Doshi and Oceanus.

The South Carolina Liquidation Order, which includes, among other things, an injunction and automatic stay of all proceedings involving Oceanus and its policyholders which includes Doshi, is entitled to full faith and credit and has the effect of suspending all proceedings against Doshi as of September 21, 2017. *Dambrot v. REJ Long Beach, LLC*, 39 A.D.3d at 797. In addition, the stay is supported by the UILA and is intended to promote “the paramount interest of the various States in seeing that insurance companies domiciled within their respective

boundaries are liquidated in a uniform, orderly and equitable manner without interference from external tribunals.” *G. C. Murphy*, 54 N.Y.2d at 81. Enforcement of the settlement between plaintiffs and Doshi would put Oceanus’ assets at risk, give plaintiffs preferential treatment over other creditors, and interfere in South Carolina’s liquidation proceedings.

Wherefore, its hereby

ORDERED that plaintiffs’ motion (Motion Sequence #1) to enforce the settlement is denied and the Stipulation of Discontinuance of the action dated September 8, 2017 is vacated as per the January 2, 2018 decision and order of this court; and it is further

ORDERED that the motion of defendants Michael Waldman, M.D., and Doshi Diagnostic Imaging Services, P.C., (Motion Sequence #2) is granted only to the extent that the action is accordingly stayed pursuant to the September 21, 2017 order of the Court of Common Pleas, Fifth Judicial Circuit, State of South Carolina, entitled “Order Commencing Liquidation Proceedings & Granting an Injunction & Automatic Stay of Proceedings” involving Oceanus Insurance Company; and it is further

ORDERED that the stay of this action pursuant to the liquidation of the Oceanus Insurance Company shall be automatically terminated when the stay imposed by the September 21, 2017 order is lifted; and it is further

ORDERED that portion of defendants’ motion that seeks the dismissal of the claims against defendant Michael Waldman, M.D., is denied; and it is further

ORDERED that the parties are directed to appear for a control date on June 26, 2018, at 9:30 AM.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: MARCH 21, 2018


EILEEN A. RAKOWER, J.S.C.