

Allstate Ins. Co. v Beltrie
2018 NY Slip Op 30933(U)
May 11, 2018
Supreme Court, New York County
Docket Number: 656373/16
Judge: Gerald Lebovits
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: IAS PART 7**

-----X
ALLSTATE INSURANCE COMPANY,

Index No. 656373/16

Plaintiff,

- against -

OMAR BELTRIE, DANESSA CUEVAS a/k/a DANESSA RIVAS, MARTHA CONDELARIO, KIMBERLY GUERRIDO, DELI HOPPE, LARISA RIVAS, REGGAE ROJAS, RANDOLPH W. SMALLS, JR., CHRISTOPHER TART, CERY VELEZ, AMC PSYCHOLOGY, P.C., ASSOCIATES IN EMERGENCY SERVICES, AUTORX LLC, CHI P&L ACCUPUNCTURE P.C., COHEN AND KRAMER, M.D., P.C., COLUMBUS IMAGING CENTER LLC, DIRECT CHIROPRACTIC CARE, P.C., DOCTORS UNITED, INC., DOMINIC ONYEMA, M.D., EXCEL SURGERY CENTER, L.L.C., HEALTHWISE MEDICAL ASSOCIATES P.C., HEEL TO TOE FOOT CENTER LLC, JEFFREY COHEN, M.D., JEFFREY COHEN, M.D. & MARK KRAMER, M.D., P.C., LEXINGTON MEDICAL DIAGNOSTIC SERVICES P.C., LINCOLN MEDICAL AND MENTAL HEALTH CENTER, LN MEDICAL DIAGNOSTIC P.C., LONGEVITY MEDICAL SUPPLY, INC., MARK KRAMER, M.D., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, MMC FACULTY PRACTICE, NEW JERSEY ORTHOPEDIC AND PAIN MANAGEMENT GROUP, NEW YORK MANUAL P.T., P.C., PRESBYTERIAN HOSPITAL WEST, PRO-ALIGN CHIROPRACTIC P.C., PT OUTCOME PT. P.C., RADIOLOGICAL ASSOCIATES OF HEMPSTEAD GENERAL HOSPITAL, LLP, SEASONED CHIROPRACTIC P.C., SONIA ARMENGOL, M.D., SYLVAN RADIOLOGY CORP. and 21ST CENTURY PHARMACY, INC.,

Defendants.
-----X

Hon. Gerald Lebovits, J.S.C.:

Plaintiff, Allstate Insurance Company (Allstate), moves, pursuant to CPLR 3025 (b), for an order (1) granting leave to serve an amended complaint, and (2) directing that the amended complaint be deemed served nunc pro tunc on the answering defendants. Defendant Longevity Medical Supply, Inc. (Longevity) opposes the motion.

BACKGROUND

Allstate commenced this action seeking, among other things, a declaration that it is not obligated to pay no-fault insurance benefits for a motor vehicle accident that occurred on May 10, 2016. The accident involved a motor vehicle registered in New York and insured by Allstate under policy number 646104661 (the Policy) issued to Yvette Caraballo-Cedeno and Bolivar Cedeno. The insured vehicle was driven by Bolivar Cedeno at the time of the accident.

Allstate states that it received applications for no-fault benefits on behalf of defendants Omar Beltrie, Danessa Cuevas a/k/a Danessa Rivas, Martha Condelario, Kimberly Guerrero, Deli Hoppe, Larisa Rivas, Reggae Rojas, Randolph W. Smalls, Jr., Christopher Tart, and Cery Velez (collectively, the individual defendants) for injuries allegedly sustained by these defendants in the May 10, 2016, motor vehicle accident. The other defendants (collectively, the providers) reportedly received assignment benefits permitting them to recover from Allstate no-fault benefits on behalf of the individual defendants. The providers sought to recover from Allstate for services they reportedly provided to the individual defendants.

Scheduling letters and no-show affidavits, submitted on a prior motion in this action, reveal that most of the individual defendants did not appear for scheduled independent medical examinations. In addition, based on certain alleged material misrepresentations made by the individual defendants during examinations under oath, Allstate's attorney concluded in an affirmation that the collision was staged. This action for declaratory relief ensued.

The complaint alleges that Allstate is entitled to a declaration that the individual defendants failed to appear for scheduled independent medical examinations and are not "eligible injured persons" entitled to no-fault benefits under the Policy (first cause of action); that the alleged injured persons failed to appear for scheduled independent medical examinations; thus, Allstate is not obligated to pay any claims for first party benefits submitted by the providers (second cause of action); that the individual defendants conspired to fraudulently obtain insurance benefits from Allstate and are not "eligible injured persons" under the Policy (third cause of action); that the alleged injured persons conspired to fraudulently obtain insurance benefits from Allstate and Allstate is not obligated to pay any claims for first party benefits submitted by the providers (fourth cause of action); that the individual defendants made material misrepresentations to Allstate regarding the May 10, 2016, motor vehicle accident and are not entitled to no-fault benefits under the Policy (fifth cause of action); that the alleged injured persons made material misrepresentations to Allstate regarding the May 10, 2016, motor vehicle accident and Allstate is not obligated to pay any claims for first party benefits submitted by the Providers (sixth cause of action); and that the Providers failed to comply with the conditions precedent to coverage under the Policy (seventh cause of action).

Defendants Chi P&L Acupuncture P.C., Metro Pain Specialists Professional Corporation, Cohen and Kramer, M.D., P.C., Jeffrey Cohen, M.D., Mark Kramer, M.D., Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C., and Longevity Medical Supply, Inc., filed answers, generally denying the allegations in the Complaint and asserting affirmative defenses (Not of Mot, Exh 2).

Jeffrey Cohen, M.D., Mark Kramer, M.D., and Jeffrey Cohen, M.D. & Mark Kramer, M.D., P.C. also alleged a counterclaim for attorney fees (*id.*).

By several stipulations and judgment entered May 12, 2017, the complaint was severed and dismissed as to defendants Dominic Onyema, M.D., Healthwise Medical Associates, P.C., New Jersey Orthopedic and Pain Management Group, New York & Presbyterian Hospital s/h/a Presbyterian Hospital West, and The Trustees of Columbia University in the City of New York s/h/a Associates in Emergency Services (collectively, the settling defendants) (*see* Not of Mot, Exh 3). The settling defendants were released from the action (*id.*).

Also, by order entered June 20, 2017, a motion to dismiss was withdrawn as to defendant Metro Pain Specialists Professional Corporation, and denied as to Longevity.

Allstate now seeks to amend the complaint to add a cause of action.

DISCUSSION

Absent prejudice or surprise to an opposing party, leave to amend a pleading shall be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit (*see* CPLR 3025 [b]; *accord Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Davis & Davis, P.C. v Morson*, 286 AD2d 584, 585 [1st Dept 2001]).

Here, Allstate seeks to amend the complaint to add an eighth cause of action alleging:

- “109. Under the terms of the policy, Allstate Insurance Company does not provide coverage for any insured (“insured”) who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss (“loss”) or damage for which coverage is sought under the policy.
110. Due to the intentional conduct, false statements, and material misrepresentations, made by OMAR BELTRIE, MARIE CONDELARIO, DANESSA CUEVAS A/K/A DANESSA RIVAS, KIMBERLY GUERRIDO, DELI HOPPE, LARISA RIVAS REGGAE ROJAS, RANDOLPH SMALLS, JR., CHRISTOPHER TART and CERY VELEZ in regards to the alleged incident on May 10, 2016, ALLSTATE INSURANCE COMPANY has not obligation to make payments

for alleged injuries sustained as a result of the alleged motor vehicle accident on May 10, 2016 for bodily injury and/or uninsured/underinsured coverage to OMAR BELTRIE, MARIE CONDELARIO, DANESSA CUEVAS A/K/A DANESSA RIVAS, KIMBERLY GUERRIDO, DELI HOPPE, LARISA RIVAS, REGGAE ROJAS, RANDOLPH SMALLS, JR., CHRISTOPHER TART and CERY VELEZ”

Because the proposed amendment involves the same set of facts as those in the original complaint, Longevity cannot reasonably claim prejudice or surprise (*see Edenwald Contr. Co. v City of New York, supra*). Specifically, Allstate seeks a declaration that it is not obligated to make any payments for the injuries allegedly sustained in the May 10, 2016, motor vehicle accident based on the false statements and material misrepresentations of the individual defendants at their examinations under oath. Also, the assertion that the proposed amendment lacks merit because plaintiff fails to show that any of the defendants submitted claims for bodily injury or uninsured/underinsured coverage pertaining to the accident is belied by the electronic submissions in this action. Thus, in an exercise of discretion, the court grants the motion for leave to amend the complaint.

Accordingly, it is


ORDERED that plaintiff’s motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the moving papers, NYSCEF document number 75, shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that plaintiff serve a copy of this decision and order on the County Clerk’s Office and the General Clerk’s Office, which are directed to amend their records accordingly; and it is further

ORDERED that defendants shall serve answers to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a status conference in Part 7, Room 345, at 60 Centre Street, on July 18, 2018, at 10:00 a.m.

Dated: May 11, 2018


J.S.C.
HON. GERALD LBOVITS
J.S.C.