

Mapfre Ins. Co. of N.Y. v Soltanov

2019 NY Slip Op 30239(U)

January 30, 2019

Supreme Court, New York County

Docket Number: 154051/2017

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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MAPFRE INSURANCE COMPANY OF NEW YORK F/K/A STATE-WIDE INSURANCE COMPANY, AMERICAN COMMERCE INSURANCE COMPANY, COMMERCE INSURANCE COMPANY, 21ST CENTURY INSURANCE COMPANY, 21ST CENTURY CASUALTY COMPANY, 21ST CENTURY PACIFIC INSURANCE COMPANY, 21ST CENTURY INSURANCE COMPANY OF THE SOUTHWEST, 21ST CENTURY ADVANTAGE INSURANCE COMPANY F/K/A AIG ADVANTAGE INSURANCE COMPANY, 21ST CENTURY ASSURANCE COMPANY F/K/A AMERICAN INTERNATIONAL INSURANCE COMPANY OF DELAWARE, 21ST CENTURY AUTO INSURANCE COMPANY OF NEW JERSEY F/K/A AIG AUTO INSURANCE COMPANY OF NEW JERSEY, 21ST CENTURY CENTENNIAL INSURANCE COMPANY F/K/A AIG CENTENNIAL INSURANCE COMPANY, 21ST CENTURY INDEMNITY INSURANCE COMPANY F/K/A AIG INDEMNITY INSURANCE COMPANY, 21ST CENTURY NATIONAL INSURANCE COMPANY F/K/A AIG NATIONAL INSURANCE COMPANY, 21ST CENTURY NORTH AMERICA INSURANCE COMPANY F/K/A AMERICAN INTERNATIONAL INSURANCE COMPANY, 21ST CENTURY PINNACLE INSURANCE COMPANY F/K/A AIG INTERNATIONAL INSURANCE COMPANY OF NEW JERSEY, 21ST CENTURY PREFERRED INSURANCE COMPANY F/K/A AIG PREFERRED INSURANCE COMPANY, 21ST CENTURY PREMIER INSURANCE COMPANY F/K/A AIG PREMIER INSURANCE COMPANY, 21ST CENTURY SECURITY INSURANCE COMPANY F/K/A NEW HAMPSHIRE INDEMNITY COMPANY, INC., FARMERS INSURANCE COMPANY OF ARIZONA, FARMERS NEW CENTURY INSURANCE COMPANY, FARMERS INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, TRUCK INSURANCE EXCHANGE, FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, FOREMOST PROPERTY & CASUALTY INSURANCE COMPANY, FOREMOST SIGNATURE INSURANCE COMPANY, BRISTOL WEST CASUALTY INSURANCE COMPANY, BRISTOL WEST INSURANCE COMPANY AND ANY AND ALL OF THEIR SUBSIDIARIES, AFFILIATES AND/OR PARENT COMPANIES,

INDEX NO. 154051/2017
MOTION DATE
MOTION SEQ. NO. 004

DECISION AND ORDER

Plaintiffs,

- v -

PAVEL SOLTANOV A/K/A PAUL SOLTANOV A/K/A PAUL DADA, YAKOV SIMKLAYEV, DMITRIY YAKUBBAYEV A/K/A DMITRIY YAUUBBAEN, PS MANAGEMENT CORP., E&Y RENTAL INC., D&L RENTAL SERVICES INC., DVL TRADING INC., COMPAS MEDICAL, P.C., JCC MEDICAL, P.C., ALLEVIATION MEDICAL SERVICES, P.C., JGG MEDICAL CARE, P.C., ADELAIDA PHYSICAL THERAPY, P.C., MASIGLA PHYSICAL THERAPY, P.C., CHARLES DENG ACUPUNCTURE P.C., ACTION POTENTIAL CHIROPRACTIC, P.L.L.C., ISLAND LIFE CHIROPRACTIC PAIN CARE, P.L.L.C., LYONEL F. PAUL, M.D.

D/B/A GENTLE CARE AMBULATORY ANESTHESIA SERVICES, JULES FRANCOIS PARISIEN, M.D., KSENIA PAVOLVA, M.D., DAVID MARIANO, P.T., JEAN CLAUDE COMPAS, M.D., JAIME GUTIERREZ, M.D. A/K/A JAMIE GUTIERREZ, M.D., ADELAIDA LAGA, P.T., MARIA MASIGLA, P.T., CHARLES DENG, L.A.C., DARREN MOLLO, D.C., ACTIVE CARE MEDICAL SUPPLY CORPORATION, CORTLAND MEDICAL SUPPLY, INC., EMC HEALTH PRODUCTS, INC., EXCEL PRODUCTS, INC., FAVORITE HEALTH PRODUCTS, INC., GREENWAY MEDICAL SUPPLY CORPORATION, HEALING HEALTH PRODUCTS, INC., INFINITY HEALTH PRODUCTS, LTD, LIDA'S MEDICAL SUPPLY, INC., MAIGA PRODUCTS CORPORATION, NEW WAY MEDICAL SUPPLY CORPORATION, PRAVEL, INC., QUALITY CUSTOM MEDICAL SUPPLY, INC., RIGHT AID MEDICAL SUPPLY, CORP., TAM MEDICAL SUPPLY CORPORATION, UNLIMITED PRODUCTS, LTD, VERASO MEDICAL SUPPLY, CORP., VLADENN MEDICAL SUPPLY CORPORATION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 137, 138, 139, 140, 141, 142, 145, 146, 147, 148

were read on this motion to

QUASH SUBPOENA

Defendants' motion seeking an order (1) to quash plaintiffs' subpoenas (2) to grant a protective order against the disclosure of the subpoenaed bank records and (3) to sanction plaintiffs for the defendants' costs including attorneys' fees is denied.

Background

Plaintiffs are insurance companies who allege that they received fraudulent claims for first-party no-fault benefits from certain defendants referred to as the medical provider ("Provider") defendants and the durable medical equipment corporation ("DME") defendants. Plaintiffs contend that defendants are operating a complex fraudulent scheme designed to bilk plaintiffs out of millions of dollars in claims for no-fault medical treatment. Plaintiffs argue that this scheme dates back to at least 2004. Plaintiffs theorize that certain defendants, who they identify as

Management Defendants, set up medical corporations that would treat patients who suffered minor injuries in car accidents. Plaintiffs contend that a considerable amount of medical treatment would be billed to plaintiffs and such treatment was either unnecessary or never actually performed.

Plaintiffs further allege that the Provider defendants would steer these patients to onsite chiropractors and physical therapists who, in turn, would pay kick-backs to the facility. The DME defendants allegedly benefitted when patients were prescribed nonessential medical equipment. Plaintiffs insist that defendants set up a medical facility first at 1468 Flatbush Avenue Brooklyn, New York and later at 1786 Flatbush Avenue, Brooklyn, New York.

As part of their claims, plaintiffs allege that some of the named defendants are (1) improperly incorporated in accordance with New York's Business Corporation Law, Education Law and No-fault Regulation 68 (2) are engaging in illegal fee splitting with laypersons (3) have improperly billed for the services of independent contractors and (4) have otherwise defrauded the plaintiffs in the payment of no-fault benefits.

During the course of plaintiffs' discovery in this action, it served subpoenas upon many non-party banking institutions to receive bank records of certain defendants from the period of August 23, 2013 to present (NYSCEF Doc. No. 147). Some of the served defendants made this motion to quash the subpoenas. Those defendants are Lyonel F. Paul, M.D. D/B/A Gentlecare Ambulatory Anesthesia Services and certain DME defendants, namely, Active Care Medical Supply Corp., EMC Health Product Inc., Healing Health Products Inc., Pravel, Inc. Right Aid Medical Supply, and Medical Supply (all defendants hereinafter referred to as "Moving

Defendants”). Plaintiffs allege that the bank records are necessary to show that the Moving Defendants are fraudulently incorporated professional corporations that are owned by laypersons and that Moving Defendants are defrauding plaintiffs for the payment of no-fault benefits.

The Moving Defendants move to quash the subpoena to produce the bank records because they claim it is without any factual or legal basis and amounts to a fishing expedition. They allege that the subpoenas are facially defective and merely pretextual because the DME defendants are not professional corporations and as a matter of law cannot be fraudulently incorporated because they are not subject to the Education Law.

In reply, plaintiffs assert that Moving Defendants have not met their burden to show that the information requested under the subpoena is utterly irrelevant to the litigation.

Discussion

“An individual or entity who seeks a protective order bears the initial burden to show either that the discovery sought is irrelevant or that it is obvious the process will not lead to legitimate discovery. Once this burden is met, the subpoenaing party must establish that the discovery sought is material and necessary to the prosecution or defense of an action, i.e. that it is relevant” (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 403, 2018 NY SlipOp 05624 [1st Dept 2018] [internal quotations and citations omitted]). “[A] subpoena should be quashed when the subpoena is being used for a fishing expedition to ascertain the existence of evidence” (*Law Firm of Ravi Batra, P.C. v Rabinowich*, 77 AD3d 532, 533, 909 NYS2d 706 [1st Dept 2010] [citation omitted]).

“The words material and necessary as used in section 3101 must 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. Section 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty” (*Kapon v Koch*, 23 NY3d 32, 38, 988 NYS2d 559 [2014] [internal quotations and citations omitted]).

Moving Defendants’ motion to quash the subpoena is denied. Defendants fail to adequately show how the requested bank records are irrelevant to the litigation. Defendants claim that the bank records are irrelevant because there is no way that the DMEs could have been fraudulently incorporated because they are not subject to the Education Law. This has already been addressed in the prior motion to dismiss made in this case (MS003) where this Court was satisfied that plaintiffs pled fraud with the required particularity to survive a motion to dismiss (*see* NYSCEF Doc. No. 143 at 6-8).

Plaintiffs theory for obtaining the bank records is that the records will help identify the owners of the DME companies and assist in identifying the payments made to laypersons and outside corporations to whom defendants allegedly transferred money and fraudulently obtained money. Plaintiffs sufficiently demonstrate that the bank records are material to the case because they can shed light on the movement of funds, which is material in determining whether Moving Defendants engaged in fraud. In other words, discovery about the DME defendants may reveal the alleged kickback scheme, where the DME defendants were purportedly paid for equipment

that the patients did not need. As t the DME defendants, it is discovery of the fraud causes of action (which survived the motion to dismiss), not only on fraudulent incorporation.

Because Moving Defendants have not met their burden in showing that the bank records are not relevant, the motion to quash the subpoenas is denied. Defendants' motion to grant a protective order against the disclosure of the subpoenaed bank records and the motion for sanctions is also denied.

Accordingly, it is hereby

ORDERED that the motion (MS004) by Moving Defendants is denied. Any stays are vacated.

Next conference: April 2, 2019 at 2:15 pm.

1/30/2019
DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE