

Sullivan v Medical Liab. Mut. Ins. Co.

2019 NY Slip Op 33566(U)

December 2, 2019

Supreme Court, New York County

Docket Number: 656121/2018

Judge: Barry R. Ostrager

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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INDEX NO. 656121/2018

JAMES SULLIVAN, CHARLES CONTE, MANSOOR BEG,
ALAN KADISON, JOHN RICCI, and RAZA ZAIDI,

MOTION DATE

Plaintiffs,

MOTION SEQ. NO. 001

- v -

MEDICAL LIABILITY MUTUAL INSURANCE COMPANY
and NORTHWELL HEALTH, INC.,

DECISION, ORDER, AND
JUDGMENT ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,
74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 90, 91, 92, 93, 94, 98, 101, 102, 103, 104, 105, 106, 107, 108,
109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

OSTRAGER, BARRY R., J.S.C.:

Before the Court is a motion for summary judgment by defendant Northwell Health, Inc.
("Northwell") and a cross-motion for summary judgment on Northwell's counterclaims by James
Sullivan, M.D., Charles Conte, M.D., Mansoor Beg, M.D., Alan Kadison, M.D., John Ricci,
M.D. and Raza Zaidi, M.D. ("Plaintiffs"). Defendant Medical Liability Mutual Insurance
Company ("MLMIC") is not a party to either motion and has not submitted any papers.

Background

This case arises out of the demutualization of MLMIC and the distribution of cash
consideration ("Cash Consideration") to policyholders in accordance with a plan approved by the
New York State Department of Financial Services ("DFS"). Plaintiffs are each surgical
oncologists who were insured by MLMIC during relevant portions of their employment with
defendant Northwell, a public healthcare network. Plaintiffs and defendant Northwell each claim

entitlement to the Cash Consideration that MLMIC is distributing in connection with its demutualization. On September 14, 2018, DFS approved the demutualization plan (the “Approved Plan”). The Approved Plan contemplates that MLMIC will hold disputed demutualization proceeds in escrow pending resolution of any disputed claim to the Cash Consideration. For the reasons stated below, the Court finds that Northwell is entitled to the Cash Consideration currently held in escrow by MLMIC.

The Instant Motion

Defendant Northwell moves for summary judgment dismissing Plaintiffs’ claims and declaring that Northwell is entitled to receive the Cash Consideration being held in escrow by MLMIC. Plaintiffs cross-move to dismiss Northwell’s counterclaims and request that the Court deny defendant Northwell’s motion for summary judgment in its entirety and declare that Plaintiffs are entitled to receive the Cash Consideration.

In their First Amended Complaint (NYSEF Doc. No. 67), Plaintiffs seek a declaratory judgment against Northwell, declaring that Plaintiffs are entitled to the approximately \$4.688 million total share of the MLMIC Cash Consideration (Third Cause of Action). Plaintiffs also claim tortious interference with contract against Northwell for filing an objection to MLMIC’s allocation of the Cash Consideration and thus causing the funds to be held in escrow pending legal resolution (Fourth Cause of Action).¹

In its Answer and Counterclaims (NYSEF Doc. No. 68), defendant Northwell alleges that each Plaintiff’s Employment Agreement implicitly required the doctor to designate Northwell as the designee for the purpose of receiving the Cash Consideration. As it is undisputed that no Plaintiff named Northwell as designee, defendant Northwell seeks a declaratory judgment that

¹ The First Two Causes of Action are asserted against defendant MLMIC, as discussed below.

receipt or retention of the Cash Consideration by Plaintiffs would constitute a material breach of the Employment Agreement. Additionally, defendant Northwell seeks a declaratory judgment that the distribution of the Cash Consideration to Plaintiffs would constitute unjust enrichment.

Plaintiffs' Third Cause of Action

Plaintiffs' motion for summary judgment on its Third Cause of Action against defendant Northwell seeking distribution of the Cash Consideration to Plaintiffs is denied.

The Court must follow the precedent set by the First Department in *Matter of Schaffer, Shonholz & Drossman, LLP v Title*, 171 A.D.3d 465 (1st Dep't 2019), which also dealt with the MLMIC demutualization. In *Schaffer*, the First Department held that: "Although [the individual professional] was named as the insured on the relevant MLMIC professional liability insurance policy, [the employer] purchased the policy and paid all the premiums on it ... [and the individual professional did not] bargain for the benefit of the demutualization proceeds." In other words, the First Department held that, absent a bargained-for agreement with respect to the Cash Consideration, the party who paid the premiums to MLMIC during the relevant period, even if not the insured, is entitled to the Cash Consideration.

This case is factually different from *Schaffer*, which was decided on stipulated facts, because, here, Plaintiffs specifically bargained to retain coverage with MLMIC, which had been Plaintiffs' insurer before Plaintiffs became affiliated with defendant Northwell. Nevertheless, it is undisputed that defendant Northwell paid Plaintiffs' insurance premiums for coverage by MLMIC during the relevant period, and the Court finds there was no bargained-for agreement with respect to the Cash Consideration. As such, Plaintiffs' motion for summary judgment on this cause of action must be denied.

Plaintiffs did distinguish the present facts from *Schaffer* by noting that in *Schaffer* the employer who had paid the insurance premiums had also procured and obtained the MLMIC policies, whereas here, it is undisputed that Plaintiffs had MLMIC policies before they began working for defendant Northwell. Additionally, Plaintiffs procured their own policies and kept these policies despite defendant Northwell's preference for another insurer. Nonetheless, the Court agrees with defendant Northwell that this is a distinction without a difference. The relevant inquiries under *Schaffer* are (1) who paid the premiums to MLMIC and (2) whether there was a bargained-for exchange *with respect to the Cash Consideration* from the demutualization process.

The Court finds that there was no bargained-for exchange with respect to the Cash Consideration. Plaintiffs do establish that their insurance coverage, and indeed their retention of MLMIC specifically, were bargained-for benefits of their overall employment agreements with defendant Northwell. However, Plaintiffs' Employment Agreements do not contain any provisions related to Cash Consideration from the MLMIC demutualization proceeds.

Additionally, the dispute among the parties regarding whether defendant Northwell properly served as a "policy administrator" is irrelevant. The Approved Plan states "the definition of Policy Administrator [does not] represent the Department's view that anyone that falls within this definition is (or is not) entitled, under the particular facts or applicable law, to receipt of the cash consideration." More importantly, the *Schaffer* court looked only at the two factors discussed above.

Plaintiffs further argue that the Court should not follow *Schaffer*, because the parties in that case did not raise, and thus the First Department did not consider, Plaintiffs' purported rights under New York Insurance Law Section 7307(e)(3).

The Court rejects the argument that Plaintiffs are entitled to the Cash Consideration under Insurance Law Section 7307(e)(3). Plaintiffs argue that because they are “policyholders” within the meaning of Section 7307, they are conclusively entitled to the Cash Consideration.

However, this interpretation of Insurance Law Section 7307 is *contrary* to the First Department’s decision in *Schaffer* by which this Court is bound. Although the First Department did not explicitly address this issue, there, as here, the “policyholder” (insured) was the employee-physician and nevertheless the First Department found that the employer, who had unquestionably paid the insurance premiums, was entitled to the Cash Consideration. *Schaffer*, 171 AD3d at 465.

The Court is also not persuaded by Plaintiffs’ argument that DFS “affirmed” the decision to allocate the Cash Consideration to policyholders only. Plaintiffs cite to a public hearing held prior to Plan approval in August 2018 in which DFS purportedly rejected the proposition that employers who had paid insurance premiums were entitled to the Cash Consideration. (NYSCEF Doc. No. 53). However, the Approved Plan specifically provided that the facts of individual cases would dictate the entitlement to the proceeds and established an objection procedure – the one that defendant Northwell followed in this case (NYSCEF Doc. No. 54). As Northwell notes, the Approved Plan provides that the ultimate legal right to the Cash Consideration, if disputed, must be decided by a court (Approved Plan at 25, “[t]he determination of who is entitled to the cash consideration depends on the facts and circumstances of the parties’ relationship and applicable law, to be decided either by agreement of the parties or by an arbitrator or court.”) Moreover, in January 2019, the Superintendent again clarified that regardless of the parties’ status as “policy administrators” or “designees” and regardless even of whether the monies are paid out of escrow to one party or another, nothing in the Approved Plan determines the

underlying legal rights of the parties to the Cash Consideration, stating (at NYSCEF Doc. No. 55), that:

The Superintendent continues to encourage all persons involved in disputes regarding the escrowed funds to resolve their differences in a prompt, fair, and equitable manner and reiterates that: (a) the parties maintain all legal rights to pursue their claims that they otherwise have absent the [DFS Approval] Decision and this Order; and (b) whether the funds are held in escrow has no effect on the respective legal rights of the parties to such funds.

Defendant Northwell's First Counterclaim

Likewise, the Court denies defendant Northwell's motion for summary judgment on its first counterclaim for a declaratory judgment that Plaintiffs breached their Employment Agreements. As discussed above, nothing in the Plaintiffs' Employment Agreements provides for the allocation of the Cash Consideration. Despite Northwell's counterclaim that Plaintiffs were implicitly required under their Employment Agreements to designate defendant Northwell as the designee of the Cash Consideration under the Approved Plan because the Employment Agreements required Plaintiffs to "assign" or "turn over" all fees or revenues generated by their practice of medicine to defendant Northwell, defendant Northwell admits, and the Court finds, that there is no contract provision expressly governing entitlement to the Cash Consideration, and the Employment Agreements are silent as to the demutualization proceeds.

Plaintiffs' Fourth Cause of Action

Plaintiffs' motion for summary judgment in their favor on their fourth cause of action for tortious interference with contract is denied. Assuming without deciding, for the purpose of this motion, that the Approved Plan constitutes a contract between MLMIC and Plaintiffs, the Court does not find that defendant Northwell tortiously interfered with that contract. Plaintiffs allege that by filing objections under the Approved Plan, with the intent that the Cash Consideration funds be held in escrow, Northwell tortiously interfered with Plaintiffs' contract with MLMIC.

The Court rejects this argument because it finds that defendant Northwell had legal justification to file such objections. The Approved Plan specifically proscribed the objection procedure, and defendant Northwell had a good faith basis, later substantiated by case law, to claim that it was entitled to the Cash Consideration because it had paid the insurance premiums to MLMIC during the relevant period.

Defendant Northwell's Second Counterclaim

Defendant Northwell's motion for summary judgment in its favor on its second counterclaim for a declaratory judgment of unjust enrichment is granted. Defendant Northwell alleged that if Plaintiffs were to receive and retain the Cash Consideration, they would be unjustly enriched. The Court finds under *Schaffer*, for the reasons discussed above, that Plaintiffs would be unjustly enriched were they to receive the Cash Consideration. *See Schaffer*, 171 AD3d at 465 (finding that "awarding [the insured] the cash proceeds of MLMIC's demutualization would result in her unjust enrichment").

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion for summary judgment on their third cause of action for a declaratory judgment that it is entitled to the Cash Consideration against Defendant Northwell is denied; and it is further

ADJUDGED and DECLARED that Plaintiffs are not entitled to the Cash Consideration from the MLMIC demutualization proceeds; and it is further

ADJUDGED and DECLARED that defendant Northwell is entitled to the Cash Consideration from the MLMIC demutualization proceeds; and it is further

ORDERED that Plaintiffs' motion for summary judgment on their fourth cause of action for tortious interference with contract against Defendant Northwell is denied; and it is further

ORDERED that defendant Northwell's motion for summary judgment on its first counterclaim against Plaintiffs for a declaratory judgment of breach of contract is denied; and it is further

ADJUDGED and DECLARED that Plaintiffs did not breach their Employment Agreements with defendant Northwell; and it is further

ORDERED that defendant Northwell's motion for summary judgment on its second counterclaim against Plaintiffs for a declaratory judgment of unjust enrichment is granted; and it is further

ADJUDGED AND DECLARED that Plaintiffs would be unjustly enriched if they were to receive the Cash Consideration from the MLMIC demutualization proceeds; and it is further

ORDERED that Defendant MLMIC may proceed to distribute the Cash Consideration consistent with the terms of this decision.

12/2/19
DATE

Barry R. Ostrager
BARRY R. OSTRAGER J.S.C.
BARRY R. OSTRAGER
JSC

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: