

Wyckoff Hgts. Med. Ctr. v Monroe
2020 NY Slip Op 30529(U)
February 13, 2020
Supreme Court, Kings County
Docket Number: 526139/18
Judge: Leon Ruchelsman
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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

-----x
WYCKOFF HEIGHTS MEDICAL CENTER,

Plaintiff,

Decision and order

- against -

Index No. 526139/18

LEONORA MONROE & MLMIC INSURANCE COMPANY,

Defendant,

February 13, 2020

-----x
PRESENT: HON. LEON RUCHELSMAN

AS 4 1 8 2

The plaintiff has moved seeking partial summary judgement pursuant to CPLR §3212. The defendant opposes the motion and has cross moved seeking summary judgement dismissing various causes of action. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff is a community hospital located on the Brooklyn Queens border. The defendant Leonora Monroe was a physician employed by the hospital until May 2017. Pursuant to the employment agreement the hospital purchased professional liability insurance on behalf of the defendant. The policy was purchased by the hospital from the Medical Liability Mutual Insurance Company [hereinafter 'MLMIC']. On July 15, 2016 MLMIC agreed to be acquired by Berkshire Hathaway on condition MLMIC convert from a mutual insurance company to a stock company. This demutualization required approval from the Superintendent of the New York State Department of Financial Services pursuant to Insurance Law §7307. Further, MLMIC adopted a plan of conversion

which required certain distributions to be made to policyholders upon the change. MLMIC determined the amount to be paid for the policy in this case was \$670,583.89. The plaintiff hospital and defendant physician both have asserted they are entitled to the cash consideration. This lawsuit was commenced and these motions have been filed, essentially seeking the compensation. The hospital argues that since it paid the premiums it is entitled to the cash compensation. The physician asserts that she is the sole policyholder of the insurance policy and consequently she is entitled to the cash compensation.

Conclusions of Law

In Schaffer, Schonholz & Drossman, LLP v. Title, 171 AD3d 465, 96 NYS3d 526 [1st Dept., 2019] the First Department held that even though the physician was the named insured on the MLMIC policy she was not entitled to the cash compensation pursuant to any demutualization. The court noted that the physician did not pay any of the premiums or other costs related to the policy and did not bargain for the demutualization benefits. The court concluded that "awarding respondent the cash proceeds of MLMIC's demutualization would result in her unjust enrichment" (Id). That determination has been followed in every case that has since considered the issue save one. Thus, in Schoch v. Lake Champlain Ob-Gyn P.C., 64 Misc3d 1215(A), 2019 WL 3227444 [Supreme Court

Saratoga County 2019], Maple Medical LLP v. Scott, 64 Misc3d 909, 105 NYS3d 823 [Supreme Court Westchester County 2019], Maple Medical LLP v. Sundaram, 64 Misc3d 1213(A), 2019 WL 3070771 [Supreme Court Westchester County 2019], Maple Medical LLP v. Diana Arevalo MD, 64 Misc3d 1213(A), 2019 WL 3070695 [Supreme Court Westchester County 2019], Maple Medical LLP v. Youkeles, 64 Misc3d 1213(A), 2019 WL 3070786 [Supreme Court Westchester County 2019], Maple Medical LLP v. Goldenberg, 64 Misc3d 1213(A), 2019 WL 3070704 [Supreme Court Westchester County 2019], Maple Medical LLP v. Mutic, 64 Misc3d 1213(A), 2019 WL 3070725 [Supreme Court Westchester County 2019]¹ and Women's Care in Obstetrics and Gynecology P.C., v. Herrick, 65 Misc3d 1221(A), 2019 WL 5691879 [Supreme Court Warren County 2019] the courts held that based upon Schaffer (supra) the entity that paid the premiums was entitled to the cash compensation offered as a result of demutualization. The defendant counters that the premiums paid were part of a compensation package. These arguments were espoused in Columbia Memorial Hospital v. Hinds, 65 Misc3d 1205(A), 2019 WL 46520674 [Supreme Court Columbia County 2019] where the court held the evidence clearly demonstrated that the insurance premiums were part of the physicians compensation

¹ It should be noted that the five noted cases were all based upon the analysis of Maple Medical LLP v. Scott (supra) and did not involve any distinct legal conclusions.

package and thus did not rule in favor of the hospital. Thus, defendant asserts that "the payment of malpractice insurance premiums is a benefit afforded by Plaintiff to Defendant, implicitly bargained for and directly affecting Defendant's salary, and otherwise allocable as part of Plaintiff's compensation package" (see, Memorandum in Further Support, ¶ 5). Therefore, the defendant argues she is entitled to the cash compensation. However, in Hinds (supra) the court specifically found that the employment agreement "establishes that the insurance premiums were deducted before the defendant received any incentive pay. That is, the defendant was to receive incentive pay, 65% of the amount by which his revenue exceeded the expenses paid by the hospital, and one the expenses being his medical malpractice insurance. Stated differently, the defendant would not receive incentive pay until the revenue generated by his services exceeded the amount of his medical malpractice insurance" (Id).

In this case, however, there is no evidence the insurance premiums were considered part of the compensation package. The Employment Agreement in Schedule A which outlines the compensation benefits lists five benefits, namely compensation, a productivity supplement, additional on call compensation coverage, "other benefits" and time off. The defendant argues that "other benefits" includes malpractice insurance payments,

however, the agreement itself defines the benefits by noting they include "health, dental, life, disability, pension, retirement or other benefit plans offered by the hospital" (see, Schedule A to Employment Agreement, § V, D). Further, the Compensation Section of Schedule A of the Employment Agreement concludes by noting that "the compensation and benefits expressly provided in this Schedule A shall be the sole and exclusive compensation and benefits to be provided to the Physician in consideration for all the services rendered or to be rendered by the Physician and all the Physician's obligations under this agreement" (*id* at § V, F(1)). Therefore, there is no evidence the premiums can be classified as compensation.

The defendant further argues the insurance malpractice premiums were necessarily considered compensation because the defendant was underpaid for over two decades. However, there is no evidence supporting that bald and conclusory contention.

Lastly, the insurance premiums submitted reveal the annual payments undertaken by the hospital were over \$120,000 for each year between July 2014 and July 2016. While that sum is significant there is still no evidence presented it was in the form of compensation and therefore the defendant's motion seeking summary judgement is denied.


Even assuming such premiums in excess of over one hundred thousand dollars each year could be considered compensation there

is still no basis to argue the cash compensation, which considering MLMIC's decision can only be termed a windfall from the prospective of the parties here, should accrue to the defendant. Thus, even if the premiums can be considered compensation, there is no basis to conclude that the cash compensation naturally flows to her as compensation as well. There is no basis to argue her underpayment, if true, should include cash compensation that nobody could foresee when the Employment Agreement was negotiated. On the contrary, there can be no question of fact in light of the above analysis that the plaintiff is entitled to the cash compensation. Therefore, based on the foregoing the motion of the plaintiff seeking summary judgement that it is entitled to the cash compensation is granted.

So ordered.

ENTER:

DATED: February 13, 2020
Brooklyn N.Y.



Hon. Leon Buchelsman
JSC

KINGS COUNTY CLERK
 FILED
 2020 FEB 21 AM 8:08