

Hoyte v PV Holding Corp.
2020 NY Slip Op 31622(U)
April 14, 2020
Supreme Court, Kings County
Docket Number: 504554/2018
Judge: Loren Baily-Schiffman
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At and IAS Part 65 of the Supreme Court of the State of New York, County of Kings at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 14 day of April 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN

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DAMEON HOYTE,

Plaintiff,

- against -

PV HOLDING CORP., RON BOWEN and NATALIE NELSON,

Defendants.

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As required by CPLR §2219(a), the following papers were considered in the review of this motion to disqualify counsel for defendants PV Holding Corp. and Natalie Nelson¹

PAPERS NUMBERED	
Notice of Motion, Affirmation and Exhibits	1
Affirmation in Opposition and Exhibits	2
Reply Affirmation and Exhibits	3

This action involves a car accident between a rental car and another car which collided with a double parked car. Plaintiff, a passenger, moves to disqualify Purcell & Ingrao as attorneys for defendants, PV Holding Corp. (hereinafter "PV"), the owner of the rental car, and Natalie Nelson (hereinafter "Nelson"), the renter, from representing both these defendants, to compel discovery and for an extension of time to file the Note of Issue.

Movant argues that a conflict of interest exists between defendants PV and Nelson on the basis that PV is seeking compensation from Nelson for property damage caused to its car as a result of the subject accident and that there are insufficient funds remaining after paying out

¹ A motion by defendant Bowen for summary judgment was denied at oral argument and a motion by defendant PV for summary judgment based on the Graves Amendment was granted at oral argument.

several claims arising from the subject accident to qualify under New York State Insurance Law as minimal coverage² and to pay to plaintiff at least \$25,000.³

PV and Nelson oppose the motion to disqualify and argue that it is based on several misleading statements. First, the statement that PV is seeking compensation from Nelson for property damage caused by the subject accident is false. There are no cross-claims between PV and Nelson and counsel asserts that it will not argue on behalf of PV that Nelson bears any responsibility for the subject accident, including property damage. Second, plaintiff's assertion that there exists an insurance policy which PV has thus far refused to produce. In fact, PV is self insured. The insurance available to Nelson is contained in the Rental Agreement she signed and she asserts that she has no other insurance available.

The opposition further argues that as neither of the defendants they represent bears any responsibility for the accident, there is no conflict. PV bears no responsibility because of the Graves Amendment and Nelson bears no responsibility because the car was stolen and she was, therefore, not the driver at the time of the accident. As indicated in the police report, the driver, a man, fled the scene of the accident on foot. As to the argument that PV acted in bad faith in settling claims of others injured in the accident, thereby reducing the indemnification limits available to Nelson, these defendants oppose the motion on the basis that there is no duty to pay out claims on a ratable basis or to consolidate them and, therefore, PV did not act in bad faith, citing *Matter of Allstate Ins. Co. v Russell*, 13AD3d 617 (2nd Dept 2004).

DISCUSSION

The disqualification motion is denied in all respects. No conflict exists between PV and Nelson. PV has not acted in bad faith in settling other claims stemming from the subject accident prior to plaintiff's claim, *Matter of Allstate, supra at 618*, and has been granted summary judgment dismissing claims against it based upon the Graves Amendment. Nelson

² There were multiple passengers injured in the subject accident.

³ The \$16,000 remaining has been tendered to and rejected by plaintiff.

has stated that she has no insurance available to her other than that from the Rental Agreement. PV has not asserted any claims against Nelson and has stated that it will not assert any such claims. The fact that less than \$25,000 remains available to plaintiff from the available insurance is not a violation of New York law nor does it constitute bad faith or establish a conflict of interest.

In his Reply, plaintiff raises new issues which the court rejects as there was no opportunity to respond to them. See Exhibit B to Reply. It also appears that PV intends to take no action based upon these allegations. Accordingly, based upon the foregoing, the court finds no conflict of interest between Nelson and PV and the motion to disqualify their counsel on the basis of a purported conflict of interest is denied.

DISCOVERY

Movant asserts that defendants Nelson and PV have failed to provide several documents sought in discovery. These defendants, in their opposition to the motion, have detailed all the discovery requests made and their responses thereto. It appears clear to the court that these defendants have provided all existing documents requested and/or those in their possession. Accordingly, the motion to compel discovery is denied.

EXTENSION OF DATE TO FILE NOTE OF ISSUE

As there appears to be no opposition to movant's request to extend the date to file the Note of Issue, the court directs that the parties stipulate to a date to file the Note of Issue that takes into consideration the restrictions occasioned by the corona virus.


IT IS HEREBY ORDERED that the motion to disqualify counsel for defendants PV and Nelson is denied, and it is further

ORDERED that the motion to compel discovery is denied, and it is further

ORDERED that the parties are to stipulate to a date to file the Note of Issue that takes into consideration the restrictions occasioned by the corona virus.

All issues not discussed herein have been rejected or are denied as moot.

This is the decision and Order of the court.



LOREN BAILY-SCHIFFMAN, JSC