Wyckoff Heights Med. Ctr. v Monroe
2020 NY Slip Op 32580(U)
August 7, 2020
Supreme Court, Kings County
Docket Number: 526139/18
Judge: Leon Ruchelsman

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

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WYCKOFF HEIGHTS MEDICAL CENTER,
Plaintiff, Decision and order

- against - Index No. 526139/18

LEONORA MONROE & MLMIC INSURANCE COMPANY,
Defendant, August 7, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendant Dr. Leonora Monroe has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated February 13, 2020 which denied her motion, essentially, seeking the cash compensation pursuant to a conversion of the insurance company that provided professional liability insurance from a mutual insurance company to a stock company. The facts were adequately presented in the prior order and need not be recited again. In the prior decision the court based its holding denying the compensation to the defendant on three distinct factors. First, the only Appellate Division decision at the time, Schaffer, Schonholz & Drossman, LLP v. Title, 171 AD3d 465, 96 NYS3d 526 [1st Dept., 2019] and numerous lower court decisions all universally held the entity that paid the premiums was entitled to the compensation and not the individual such as the defendant in this case. Second, the court concluded the insurance premiums were not part of the defendant's compensation package and thus the compensation payment was not "hers" to receive. Third, the court explained that no party contemplated the possibility or

probability of such payments when the employment agreement was negotiated and entered into by the parties thus the defendant had no right to such payments.

Upon reargument, the defendant argues that a recent decision, Maple-Gate Anesthesiologists P.C. v. Nasrin, 182 AD3d 984, 122 NYS3d 840 [4th Dept., 2020] held the policyholder was entitled to the compensation and that consequently since the defendant is the policyholder the court should grant reargument and upon such reargument grant defendant's motion seeking summary judgement.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The recent Maple-Gate decision (supra) held that pursuant to Insurance Law §7307(e)(3) the employee is the policyholder of the insurance policy and that therefore regardless of whether the institution pays the premiums the employee is entitled to the compensation following the demutualization.

There is no dispute that the employee, the defendant in this case is the policyholder. Indeed, the term policyholder is

defined "with respect to any Policy, the Person(s) identified on the declarations page of such Policy as the insured" (see, Plan of Conversion, Article 2.1 "Policyholder"). The declarations page identifies Dr. Monroe as the insured, thus she is clearly the policyholder.

However, there is no dispute she did not make any premium payments and that all premium payments were made by the plaintiff. Insurance Law §7307(e)(3) relied upon in Maple-Gate (supra) provides that "the equitable share of the policyholder in the mutual insurer shall be determined by the ratio which the net premiums (gross premiums less return premiums and dividend paid) such policyholder has properly and timely paid to the insurer on insurance policies in effect during the three years immediately preceding the adoption of the resolution by the board of directors" (id). While a plain reading of the statute forecloses any compensation due a policyholder who never paid any premiums, cases in the malpractice insurance context have interpreted that sentence to require the cash compensation be directed to the policyholder even though "such policyholder" did not make the payments. Thus, in Maple-Gate v. Anesthesiologists P.C. v. Nasrin, 63 Misc3d 703, 96 NYS3d 837 [Supreme Court Erie County 2019] the court explained that "no distinction is made between a policyholder who pays the premium out of his own pocket versus a policyholder whose employer pays the premium as part of an

employee compensation package. Insurance Law §7307 does not confer an ownership interest in the stock or to the to the [sic] cash consideration to anyone other than the policyholder" (id). The Third Department adopted this approach and held the language of Insurance Law §7307(e)(3) demands the policyholder receive the cash compensation even if such policyholder did not pay the premiums. The court in Schoch v. Lake Champlain Ob-Gyn, P.C., _AD3d_, _NYS3d_, 2020 WL 3271606 [3rd Dept., 2020]) explained the language in the statute which purports to require payment by the policyholder so that a ratio can be determined really only "pertains to how the considerations are calculated, rather than to whom they must be paid" (id) eliding the precise language of the statute. The Third Department relied upon Maple-Gate, (supra) and expressly declined to follow Schaffer, (supra). Thus, there can be no dispute there is a clear split in the departments concerning this issue. Schaffer (supra) based its holding on the fact it would be unjust to award the cash compensation to a party that did not make any of the premium payments. Maple-Gate (supra) and Schoch (supra) based their identical holdings on an interpretation of Insurance Law §7307 that awards the cash compensation to the employee even though such employee did not make any of the premium payments. Consequently, a fresh analysis could prove helpful.

It is clear that Insurance Law §7307 did not contemplate a

demutualization plan and accompanying cash compensation payment where the policyholder did not pay the premiums herself (see, Demutualization of New York Domestic Property/Casualty Insurers, New York State Bar Journal September/October 1998 by Peter Lencsis). Indeed, there can be no dispute that if such policyholder paid the premiums then of course such policyholder would be entitled to the cash compensation. This litigation arises only because the premiums were paid by the plaintiff on behalf of the defendant. In truth, the defendant's only legal claim to the cash compensation is an adherence to her designation as the 'policyholder' and all the rights that flow from that designation. However, a policyholder only maintains an entitlement to the cash compensation if the policyholder paid the premiums (Insurance Law §7307). The arguments espoused in Maple-Gate (supra) and Schoch (supra) that a policyholder need not pay the premiums as long as someone else pays them on her behalf is an expansion of Insurance Law §7307 that is not compelled from the text of the statute. Further, the demutualization plan itself contemplated competing claims by the institution that paid the premiums and the employee that received its benefits and established a dispute resolution mechanism to resolve such conflicts, acknowledging the tension created in this context. Thus, the plan explained that "in the event that a Policy Administrator or EPLIP Employer believes that it has a legal

right to receive any Cash Consideration allocated to an Eligible Policyholder, it may file an objection with MLMIC at any time prior to the date of the Superintendent's public hearing in accordance with the provisions set forth in Schedule I, and such objection will be resolved in accordance with such provisions" (§6.3(f) of the Plan of Conversion). Schedule I provided that in case such dispute arises the cash compensation will be placed in escrow until resolved. These provisions have no meaning and there can be no possible basis for any disputes if the employee is automatically entitled to the benefits merely because she is a policyholder. The defendant argues in Reply that there can be no doubt and therefore no dispute that defendant is solely and legally entitled to the cash compensation based strictly upon the language of Insurance Law §7307. The defendant argues that "in light of the specific statutory directive requiring that the Cash Consideration be paid to the policyholder, there is no rule of construction that would provide an implied right in equity to Plaintiff, which would inevitably directly contradict this statutory provision. There is no room for an interpretation that would engraft onto the statute a contrary result - even a result which might otherwise appear to be equitable or even sensible" (Affirmation in Reply ¶9). However, there can be no possible reason to create a dispute resolution forum if there can be nothing to dispute. Thus, clearly, notwithstanding Insurance Law

§7307 a court must conduct an independent analysis of the competing claims to the cash compensation.

Moreover, the decision of the Department of Financial Services dated September 6, 2018 likewise acknowledged the anomaly of a 'policyholder' who has not paid the premiums, conceding that such policyholder "might or might not be the person who paid the premiums" (see, Department of Financial Services decision, page 23). The Department of Financial Services decision correctly understood the statutory tension and explained that "Insurance Law §7307(e)(3) defines the policyholders eligible to be paid their proportional shares of the purchase price, but also recognizes that such policyholders may have assigned such legal right to other persons. Therefore, the Plan appropriately includes an objection and escrow procedure for the resolution of disputes for those persons who dispute whether the policyholder is entitled to the payment in a given case" (id). Significantly, the Department of Financial Services decision did not limit any disputes only to cases of assignments, where again, there can be little basis for disagreement. Rather, the Department of Financial Services decision noted that "in order for a person to trigger the escrow, there must be evidence of a designation by the policyholder of that person to act as a Policy Administrator, which means to be designated by the policyholder as 'the agent of [the] Insured[] ... for the paying

of Premium, requesting changes in the policy, including cancellation thereof, and for receiving dividends and any return Premiums when due'" (id at 24). The plaintiff in this case had the sole authority to pay the premiums, request changes and had the sole right to receive dividends and to receive a return of the premiums. The Department of Financial Services decision contemplated the right of the plaintiff to present claims for the cash compensation. This reality was rejected by Maple-Gate (supra) and Schoch (supra) which held no such claims are possible sine the policyholder is entitled to the cash compensation regardless of who paid the premiums. Indeed, the defendant argues those decisions "explicitly rejected the theory that paying premiums or performing other administrative duties with respect to a policy is sufficient to establish an equitable claim" (Affirmation in Reply, ¶10). While that is certainly true there are clearly alternative approaches to the broader meaning of 'policyholder' especially where the policyholder did not pay the premiums. The Department of Financial Services decision certainly understood that competing claims rightly exist. Moreover, the Department of Financial Services decision acknowledged that resolution of this issue could not be solved by simply resorting to the language of Insurance Law §7307 to the exclusion of all other evidence since, as noted, that would not really resolve any actual conflict at all. Thus, without

resolving the tension the Department of Financial Services decision merely concluded that "the 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" (id). Thus, the difficulty of this issue was readily apparent throughout the entire demutualization process with no resolution suggested other than by arbitration or court. Clearly, this court cannot decide the tension by mere interpretation or parsing of Insurance Law §7307. In fact, Insurance Law §7307 proves unhelpful in this context as noted above. Therefore, the court must decide the issue only considering the specific facts of this case as well as the applicable law in reaching a determination. To the extent Maple-Gate (supra) and Schoch (supra) reached a different result, this court is not bound by those decisions (Schaffer, supra).

As explained, the sole basis for the defendant's claim to the cash compensation is that she happens to be the policyholder of the insurance contract and thus has a superior legal and equitable claim to the cash compensation over the hospital. However, she did not bargain for such policy, she did not negotiate any of its terms and of course she did not pay the premiums. Indeed, she had no say whatsoever in the procuring of the insurance contract or the parameters and scope of such

contract and can therefore more accurately be termed a passive policyholder. More importantly, the insurance contract was not part of the defendant's compensation package. These factors are precisely the factors the Department of Financial Services decision contemplated must be examined to determine who is entitled to the cash compensation. This does not mean that an employee policyholder can never vindicate her claims to the cash compensation. The case of Columbia Memorial Hospital v. Hinds, 65 Misc3d 1205(A), 118 NYS3d 368 [Supreme Court Columbia County 2019] is instructive. In that case the court held the evidence clearly demonstrated that the insurance premiums were part of the physicians compensation package and thus the employee was entitled to the cash compensation. The defendant argues that whether or not the employee compensation package included the malpractice insurance is not relevant to this analysis because in any event the insurance payments were clearly a 'benefit' of compensation. While that is undoubtedly true the issue is not whether a benefit was conferred upon Dr. Monroe, the issue is whether it was a component of her compensation package which conferred rights to her thereby. Since the insurance was not part of her compensation agreement she maintains no rights in the insurance and consequently no rights in the cash compensation.

The defendant points out that both Maple-Gate (supra) and Schoch (supra) held there were no questions the doctors in

question had the legal right to the cash compensation. However, as noted those decisions cannot really be squared with the holding reached in Schaffer (supra) which held that to the contrary, the hospital had the legal right to the cash compensation for the reasons enumerated. To be sure, Maple-Gate (supra) and Schoch (supra) have placed an undue dependence on the word 'policyholder' found in Insurance Law §7307, where the precise facts of this case do not easily fit within that statutory context at all.

Moreover, it would unjust to award the cash compensation to the defendant who never paid for the premiums at any time during her employment. That truism further undermines any reliance upon Insurance Law §7307 because awarding the cash compensation to her violates the express provision of the statute that requires the "policyholder has properly and timely paid" the premiums. Highlighting the word 'policyholder' to the exclusion of the requirement such policyholder pay the premiums impermissibly elevates one phrase of the statute over another. By the same token ignoring the phrase 'policyholder' suffers the same infirmity. Thus, resolution of this case can only be decided by resorting to legal principles that stand beyond the language of the statute. Those principles lead to the inescapable conclusion that the defendant is not entitled to the cash compensation.

Therefore, based on the foregoing, the motion seeking

reargument is denied.

So ordered.

ENTER:

DATED: August7, 2020
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC