

American Tr. Ins. Co. v Kaisman
2020 NY Slip Op 33989(U)
November 30, 2020
Supreme Court, Kings County
Docket Number: 508784/2020
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

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AMERICAN TRANSIT INS. CO.,

Plaintiff,

-against-

ARDEN M. KAISMAN, M.D., et al.,

Defendants.

-----X

DECISION/ORDER

Index No.: 508784/2020

Motion Seq. No.: 3 & 4

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of non-party Sakandar Iqbal's motion to intervene and plaintiff's motion to disqualify Sakandar Iqbal's counsel

Papers	NYSCEF Doc.
Order to Show Cause, Affirmation, and Exhibits Annexed	<u>8-25, 54-57</u>
Notice of Motion, Affirmation and Exhibits Annexed	<u>59-69</u>
Answering Affirmations, Exhibits, and Memoranda	<u>57-58, 73-76</u>
Reply Affidavits	<u>77, 84-85</u>

Upon the foregoing cited papers, the Decision and Order on these Motions is as follows:

This declaratory judgment action arises following a motor vehicle accident that occurred on August 30, 2016. One of the drivers was non-party Iqbal Sakandar, who is also referred to in many of the documents as Sakander Iqbal. In this action, plaintiff American Transit Ins. Co. ("ATIC"), Sakandar's insurer, seeks a declaratory judgment that "American Transit owes no duty to pay no-fault claims to the provider defendants with respect to the August 30, 2016 collision referenced in the complaint, and permanently staying any and all pending no-fault suits or arbitrations relating to this matter 1) due to the fact that the alleged injuries of the non-party claimant and any subsequent no-fault treatment submitted by the provider defendants were not causally

related to the August 30, 2016 alleged accident; 2) due to the fact that the non-party claimant materially misrepresented the facts and circumstances relating to the August 30, 2016 collision, violating the no-fault regulations; and 3) due to the fact the August 30, 2016 collision was the result of a deliberate, staged, and intentional acts committed by the non-party claimant, and thus, was not a covered event under the no-fault regulations.”

This action was filed subsequent to the commencement of a related action, *Sakandar v American Transit Ins. Co.*, Index No. 707562/2019 (“Queens action”), which remains pending in Queens County Supreme Court (commenced 04/30/2019).¹ In the Queens action, Sakandar seek a declaratory judgment against American Transit Ins. Co. that he is entitled to collect no-fault benefits for his lost wages (see E-File Doc 10 [Queens action pleadings]). Sakandar also seeks damages from his insurer for its alleged breach of contract, for its failure to pay his lost wages, and he has also asserted a claim for “bad faith” under General Business Law § 349 in that action.

In Motion 03, non-party Sakandar seeks to intervene here, under CPLR 1012 (a) (2) [a of right] or 1013 [permissive]. Sakandar also seeks to dismiss the complaint on the grounds that he was not joined as a necessary party (E-File Doc 54 [Sakandar’s OSC]). ATIC states in opposition that Sakandar has assigned his rights under the policy to defendant health care providers. ATIC alleges that as Sakandar has assigned his rights, he is not entitled to intervene, and have opposed his motion to intervene.

¹ A second related action, *American Transit Ins. Co. v Mt. Sinai Hosp.*, Index No. 655442/2019, was also previously commenced, in New York County, but has since been discontinued. Mt. Sinai Hospital subsequently was discontinued against by plaintiff in this action.

In Motion 04, ATIC moves to disqualify Sakandar's counsel. ATIC claims that since his firm represented ATIC (between 2010 and 2015) he cannot now represent a party with an adverse interest to that of ATIC. ATIC further seeks to permanently enjoin the Law Offices of Jason Tenenbaum P.C. from representing any and all parties in any actions involving ATIC.² In the supporting papers, ATIC identifies Motion 04 as a cross motion, but Motion 04 was noticed by [ordinary] notice of motion.

Discussion

Motion 04: ATIC's Motion to Disqualify Counsel

"[T]he disqualification of an attorney is a matter which rests within the sound discretion of the court" (*Legacy Builders/Developers Corp. v Hollis Care Group, Inc.*, 162 AD3d 649, 649-650 [2d Dept 2018] [quotation marks omitted], quoting *Olmoz v Town of Fishkill*, 258 AD2d 447, 447 [2d Dept 1999]). "A party's entitlement to be represented in ongoing litigation by counsel of his [or her] own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted, and the movant bears the burden on the motion" (*Olmoz*, 258 AD2d at 447 [internal citation omitted]).

"A party seeking to disqualify an attorney or a law firm for an opposing party on the ground of conflict of interest has the burden of demonstrating (1) the existence of a prior attorney-client relationship between the moving party and opposing counsel, (2) that the matters involved in both representations are substantially related, and (3) that the interests of the present client and former client are materially adverse" (*Mediaceja v*

² ATIC has made a substantially identical motion to disqualify Sakandar's counsel in the related Queens action as well (Motion 05 in the Queens action). That motion has not yet been decided.

Davidov, 119 AD3d 911, 911-912 [2d Dept 2014]). “[V]ague and conclusory assertions [are] insufficient to make a clear showing or raise a substantial issue of fact as to whether an attorney-client relationship had been previously formed” (*Legacy Builders/Developers Corp.*, 162 AD3d at 649-650).

Here, ATIC argues that the motion to disqualify should be granted because counsel for the proposed intervenor, Sakandar, The Law Offices of Jason Tenenbaum, P.C., was counsel to ATIC from 2010-2015 and represented ATIC in “at least” 500 matters dealing with the no-fault insurance field. ATIC asserts that it had an attorney-client relationship with Tenenbaum and Tenenbaum’s current client’s interests are averse to ATIC’s interests. ATIC also argues that this action bears “a substantial similarity to matter’s [sic] in which Mr. Tenenbaum was previously involved with and to which he gained important and lasting information by virtue of” his relationship with ATIC. Thus, ATIC argues, “the continued representation by Mr. Tenenbaum and his firm in this and other similar matters will undisputedly give the clear and manifest appearance of impropriety which by virtue of the case authority (cited in the accompanying memorandum of law) is a separate, distinct and sufficient ground, in and of itself, to warrant disqualification.”

Additionally, ATIC argues that Tenenbaum’s representation of Sakandar creates “an appearance of impropriety that outweighs any countervailing interest Sakandar has in choosing his own counsel.” ATIC speculates that Tenenbaum will violate his continuing obligations to ATIC, his former client, because he may have and potentially utilize “confidences” he learned as counsel for ATIC. Specifically, ATIC asserts that Tenenbaum’s representation of the proposed intervenor will violate at least Rules 1.6

(Confidentiality of Information) and 1.8 (Conflict of Interest with Former Clients) of the Code of Professional Responsibility.

In opposition, Tenenbaum avers that he did not perform any legal work for ATIC in the six years prior to the filing of this motion (E-File Doc 67 [Tenenbaum Aff]). He argues that ATIC has not satisfied its burden to demonstrate that disqualification is warranted, because its proof in support of the motion is insufficient. Tenenbaum denies having any confidential information related to this action or to ATIC's current business practices and argues that there is no proof that his firm's prior representation of ATIC involved the same transactions or legal disputes which are involved in either this or the Queens action.

The branch of the motion to disqualify The Law Offices of Jason Tenenbaum P.C. from representing the proposed intervenor in this action is denied. ATIC has not tendered evidence sufficient to meet its heavy burden of establishing that the current matter is substantially related to the matters which Tenenbaum's firm worked on from 2010-2015. Specifically, ATIC does not assert, or offer evidence demonstrating, that Tenenbaum worked on any matter related to this accident (in 2016) or any transactions concerning the proposed intervenor's coverage. The underlying accident, assignment of benefits, and denial of coverage all occurred after Tenenbaum's firm had ceased providing legal services to ATIC. Further, ATIC's assertions regarding the "confidences" Tenenbaum was purportedly privy to are both vague and conclusory, and ATIC only speculates that Tenenbaum's representation may violate the Rules of Professional Conduct (*see e.g. Legacy Builders/Developers Corp.*, 162 AD3d at 649-650; *Sessa v Parrotta*, 116 AD3d 1029, 1030 [2d Dept 2014]) ["(C)onclusory allegations that, in the

prior representation, C & V gained access to confidential material substantially related to the present litigation were insufficient to determine the nature of the confidential information allegedly obtained or that there is a reasonable probability that such information would be disclosed during the present litigation.”]).

The branch of the motion which seeks an order “permanently enjoining the Law Offices of Jason Tenenbaum from representing parties in actions where an adverse interest is taken against counsel's former client, the American Transit Insurance Company” is denied. This court cannot (and should not) determine whether the Law Offices of Jason Tenenbaum P.C. should be disqualified in other unspecified matters unrelated to this index number.

Motion 03: Sakandar’s Motion to Intervene

In Motion 03, Sakandar moves to intervene in this action as of right pursuant to CPLR 1012 (a) (2) or, alternatively, by permission pursuant to CPLR 1013. Sakandar argues that he may be bound by any judgment that might be entered in this action and, thus, he should be permitted to intervene as of right as a necessary party. He further argues, alternatively, that his claims in the Queens action have common questions of law and/or fact with those presented here, warranting permissible intervention.

In opposition, ATIC argues that plaintiff’s motion should be denied because he assigned his no-fault benefits to the defendant health care providers and, thus, he will not be impacted by this action under any circumstances.

Sakandar’s motion to intervene is granted. The denial of coverage sought in this action would affect Sakandar’s rights, despite the assignment of benefits to the defendant health care providers (*see e.g. Albanese v Charles*, 134 AD3d 657 [2d Dept

2015)). If the medical bills are not paid by insurance, they will have to be paid by him, as that is the standard language in an assignment of no-fault benefits. Further, it is in the interests of the medical defendants in this action that the facts presented in this action not vary from those presented in the Queens action, where Sakander is the plaintiff, as both lost wages and medical expenses come from the same no-fault economic loss benefit in his policy, and the total amount available may be less than the total amount of the claims.

The remainder of the relief requested in Sakandar's motion is denied.

Accordingly, it is **ORDERED** that the motion to intervene is granted to the extent that nonparty Iqbal Sakandar (or Sakandar Iqbal) may intervene in this action (Motion 03) as of right, pursuant to CPLR 1012. The caption is amended to add Sakandar as a defendant, as follows: "Iqbal Sakandar a/k/a Sakandar Iqbal". His proposed answer [e-file doc 23] is deemed served but must be e-filed as his Answer within 30 days, as it is now just an exhibit. The motion to disqualify (Motion 04) Sakandar's counsel is denied in its entirety.

This shall constitute the decision and order of the court.

Dated: November 30, 2020

ENTER:



Hon. Debra Silber, J.S.C.