

Arch Ins. Co. v DocNetwork, Inc.

2022 NY Slip Op 30248(U)

January 24, 2022

Supreme Court, New York County

Docket Number: Index No. 654746/2020

Judge: Barry 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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ARCH INSURANCE COMPANY,

Plaintiff,

- v -

DOCNETWORK, INC. (f/k/a DOCNETWORK, LLC, a/k/a CAMPDOCS), and CAMPASSURE, LLC,

Defendants.

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HON. BARRY R. OSTRAGER

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and values: 654746/2020, blank, 005

DECISION + ORDER ON MOTION

The Court heard oral argument on January 24, 2022 via Microsoft Teams on the motion by plaintiff Arch Insurance Company ("Arch") to file an Amended Complaint. The original Complaint was dismissed without prejudice to a motion to amend by Decision and Order dated October 6, 2021 (NYSCEF Doc. No. 72). In the Proposed Amended Complaint (NYSCEF Doc. No. 81), Arch seeks to amend the caption to correct the misspelling of the name of the first defendant so that the a/k/a reads "CampDoc" in the singular, not the plural, and to further add various factual allegations and causes of action as against both defendants DocNetwork, Inc. (f/k/a DocNetwork, LLC, a/k/a CampDoc) (hereafter "CampDoc") and CampAssure, LLC ("CampAssure"). The proposed amendment of the caption is granted without objection, and the balance of the motion is granted in part and denied in part in accordance with the proceedings on the record on January 24, 2022 and as follows.

At issue here is a policy offered by Arch for campers that included a provision allowing policyholders to cancel for any reason (the "CFAR" Policy). CampDoc allegedly acted, inter alia, as the "Producer" marketing and selling policies via its website. CampAssure allegedly

served as the “Broker”, purportedly acting alongside CampDoc. Arch contends, among other things, that CampDoc and CampAssure continued to market and sell the CFAR Policy during the COVID-19 pandemic despite instructions from Arch to discontinue the Policy so as to avoid losses related to anticipated cancellations during the pandemic. Arch alleges that it suffered significant monetary losses based on defendants’ failure to remove the CFAR policy from the marketplace and by continuing to make sales. In the October 6, 2021 Decision, the Court dismissed the Complaint, finding that the written agreements between the parties, as described in the pleadings, gave Arch the exclusive authority to bind coverage.

In the Proposed Amended Complaint, Arch expands its factual allegations and causes of action to claim in its First and Sixth Causes of Action that CampDoc and CampAssure had actual and apparent authority to bind coverage as an agent of Arch and that CampDoc and CampAssure breached their contracts with Arch by continuing to market sell policies, both before and after March 20, 2021. despite notice that Arch was pulling the CFAR Policy. Arch also has added more specific allegations that CampDoc and CampAssure worked together to sell the policies via the CampDoc website, which allowed consumers to pay premiums and secure coverage.

Leave to amend shall be freely granted, “so long as there is no surprise or prejudice to the opposing party,” unless the allegations are “clearly devoid of merit.” *Kocourek v. Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 (1st Dep’t 2012); *Miller v Cohen*, 93 AD3d 424, 425 (1st Dep’t 2012). As the breach of contract claims in the Proposed Amended Complaint simply expand upon the original Complaint, the Court finds no surprise or prejudice. Further, the additional allegations have been enlarged significantly, and the Court finds that the proposed contract claims are not clearly devoid of merit. Therefore, plaintiff is granted leave to amend to add the factual allegations and legal theories supporting the First and Sixth Causes of Action.

The Court otherwise denies leave to amend. The breach of contract claims based on the alleged failure to provide marketing and promotional materials and books and records (the Second and Seventh Causes of Action) lack merit because, even assuming a proper demand had been made, no damages are alleged based on defendants' purported failure to provide the documents. Arch may pursue appropriate discovery.

The Third and Eighth Causes of Action alleging a breach of fiduciary duty, and the Fourth and Ninth Causes of Action for unjust enrichment, all fail as duplicative of the contract claims, as the Court previously held. The Fifth Cause of Action against CampDoc for fraud based on the alleged misrepresentation that it would cease sales fails as duplicative of the contract claim and as otherwise lacking in merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to amend the caption is granted, and the County Clerk is directed, upon notice from plaintiff via the filing of Form EF-23 available on the NYSCEF Home Page, to substitute DOCNETWORK, INC. (f/k/a DOCNETWORK, LLC, a/k/a CAMPDOC), for DOCNETWORK, INC. (f/k/a DOCNETWORK, LLC, a/k/a CAMPDOCS); and it is further

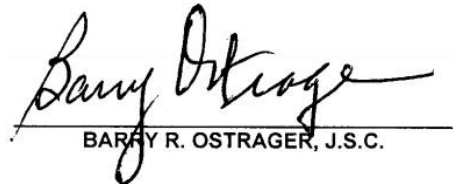
ORDERED that plaintiff's motion to amend is granted to the extent of allowing plaintiff to efile a First Amended Complaint within ten days of the date of this Decision and Order that includes the factual allegations and legal theories related to the First and Sixth Causes of Action and is otherwise denied; and it is further

ORDERED that defendants shall respond to the First Amended Complaint within twenty days of the filing of the First Amended Complaint; and it is further

ORDERED that defendants shall meet and confer and agree upon a discovery schedule and complete a Proposed Preliminary Conference Order using the form available on the Part 61 website and efile it with a cover letter that includes a dial-on number no later than March 1, 2022; and it is further

ORDERED that a Preliminary Conference is scheduled for March 8, 2022 at 10:00 a.m.

Dated: January 24, 2022


BARRY R. OSTRAGER, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> GRANTED | | <input checked="" type="checkbox"/> GRANTED IN PART | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> SUBMIT ORDER | |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |