

Arch Ins. Co. v DocNetwork, Inc.
2022 NY Slip Op 31583(U)
May 12, 2022
Supreme Court, New York County
Docket Number: Index No. 654746/2020
Judge: Barry R. Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

Table with columns for INDEX NO., MOTION DATE, MOTION SEQ. NO., and DECISION + ORDER ON MOTIONS. Includes names of ARCH INSURANCE COMPANY and DOCNETWORK, INC.

HON. BARRY R. OSTRAGER

The Court heard oral argument on May 11, 2022 via Microsoft Teams on the motions by defendants DocNetwork, Inc. (f/k/a DocNetwork, LLC, a/k/a CampDoc) (hereafter "CampDoc") and CampAssure, LLC ("CampAssure") to dismiss the Amended Complaint filed by plaintiff Arch Insurance Company ("Arch") (NYSCEF Doc. No. 106) pursuant to CPLR 3211(a)(1) and (7) based on documentary evidence and failure to state a cause of action. In accordance with the transcript of proceedings on the record on May 11, 2022, the motions are granted in part and are otherwise denied on the terms and conditions stated in the transcript of proceedings and herein.

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 and collect premiums 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 when instructed to do so and by continuing to make sales.

In its October 6, 2021 Decision and Order (NYSCEF Doc. Nos. 71 and 72), the Court dismissed the original Complaint, finding that the written agreements between the parties, as described in the pleadings, gave Arch the exclusive authority to bind coverage such that none of defendants' conduct resulted in a CFAR policy that bound Arch. Thereafter, by Decision and Order dated January 24, 2022 (NYSCEF Doc. No. 104), the Court granted the motion by Arch for leave to file an Amended Complaint alleging that CampDoc and CampAssure had actual and apparent authority to bind coverage as agents of Arch and that CampDoc and CampAssure had breached their contracts with Arch by continuing to market and sell policies, despite notice that Arch was suspending the CFAR Policy. The Amended Complaint at issue here contains only two causes of action, asserting claims for breach of contract against CampDoc and CampAssure, respectively, and the two motions heard by the Court today were the pre-Answer motions to dismiss by the defendants which the Court permitted when granting leave to amend.

As stated in the May 11, 2022 transcript of proceedings, the Court is allowing this action to proceed to the discovery phase with great reluctance based on the liberal pleading standard applied to pre-Answer motions to dismiss. That standard requires the Court to accept the allegations in the Amended Complaint as true and find that a cause of action has been stated so long as "the facts as alleged fit within any cognizable legal theory" and the documentary evidence submitted fails to "conclusively establishes a defense to the asserted claims as a matter of law" *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). This standard is significantly different than the standard applied on a motion to amend, which allows for the amendment of the complaint unless the claims are "palpably insufficient or clearly devoid of merit..." *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dep't 2010). Therefore, the Court rejects Arch's claim that the Court must deny defendants' motions to dismiss based on law of the case.

Nevertheless, the Court declines to dismiss the Amended Complaint at this stage of the proceedings, without prejudice to summary judgment motions after discovery, on the condition that all discovery is completed within ninety days of the date of this Decision and Order. With respect to motion sequence 006, the Court finds that Arch adequately alleged – albeit barely -- that CampAssure participated in the negotiation and consummation of the underwriting and sale of the CFAR policy in a manner that violated Section I of the parties’ contract. Arch also alleged that CampAssure violated Section IV of the contract by marketing the CFAR policy after Arch had indicated it no longer intended to offer the policy. However, Arch explicitly alleged in the Amended Complaint (at ¶47) that it had advised defendants that it would “be suspending CFAR sales as of 3/20/2020 ...”. Thus, the Court expressly finds that no cause of action can be stated for policies purportedly sold before March 20, 2020 effective date of Arch’s instruction, and the motion to dismiss is granted to that extent. The Court also finds it perplexing that the amended complaint does not identify a single policy that was allegedly bound subsequent to March 20, 2020 even though Arch would presumably be in possession of such information two-plus years after March 20, 2020.

The Court applies a similar analysis to conditionally deny the motion to dismiss by CampDoc (seq 007). Notwithstanding CampDoc’s citation to contract provisions that limit its authority to bind Arch, Arch has sufficiently alleged that CampDoc was selling policies and collecting premiums via its website with the knowledge and consent of Arch, and with actual or apparent authority from Arch, and that CampDoc violated contractual provisions requiring CampDoc to comply with Arch’s instructions regarding the offer and sale of CFAR policies. Again, all claims that pre-date the March 20, 2020 effective date of Arch’s instructions are dismissed, and the motion is otherwise denied on the conditions stated in the Decision.

Defendants shall Answer the Complaint within twenty days. The Court notes that the parties have efiled a proposed Preliminary Conference Order (NYSCEF Doc. No. 145). However, in light of the Court’s direction that discovery be completed within the next ninety day, counsel shall promptly prepare and submit a revised Preliminary Conference Order with a Note of Issue deadline of August 15, 2022 and a cover letter setting forth a dial-in number for the conference. As information and documentation about allegedly offending policies and filed claims is presumably within the possession of Arch, that information and documentation shall be provided to defendants without delay.

Accordingly, it is hereby

ORDERED that defendants’ motions to dismiss the Amended Complaint (seq. nos. 006 and 007) are granted to the extent of dismissing all claims relating to policies that preceded the March 20, 2020 effective date of plaintiff’s instructions to defendants to cease marketing and selling CFAR policies, and the motions are otherwise denied on the terms and conditions set forth in the May 11, 2022 transcript of proceedings as summarized herein. A Preliminary Conference is scheduled for June 6, 2022 at 10:30 a.m. The revised Preliminary Conference Order and dial-in number shall be filed by June 1.

Dated: May 12, 2022



 BARRY R. OSTRAGER, J.S.C.

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