

Certain Underwriters at Lloyds London v Martin

2023 NY Slip Op 35014(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 651961/2020

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

CERTAIN UNDERWRITERS AT LLOYDS LONDON,

Plaintiff,

- v -

DENNY MARTIN, DENNY MARTIN M.D., P.C., AM PM
MEDICAL, P.C.

Defendant.

-----X

INDEX NO. 651961/2020

MOTION DATE 04/21/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff's motion for summary judgment is granted.

Background

In this insurance dispute, plaintiff seeks declaratory relief that it properly rescinded four disability insurance policies issued to defendants, in connection with their medical practice. It claims that defendant Martin made misstatements while applying for these policies that justify plaintiff's decision to rescind them and not pay out the benefits sought by defendants.

In June 2019, Martin claims that he began experiencing facial spasms and pain, and was later diagnosed with trigeminal neuralgia and cervical myelopathy. He decided that this condition prevented him from treating his patients (Martin's specialty was in neurosurgery) and so he sought coverage under the disability policies issued by plaintiff.

In this motion, plaintiff seeks summary judgment on the ground that Martin made material misrepresentations in his application for the disability insurance policies. It claims that

he omitted information that, had it been disclosed, would have caused plaintiff to refuse to issue the policies. Plaintiff argues that Martin omitted that he was engaged in Medicare fraud, that he was in a contentious divorce proceeding with his wife and that he had been arrested for alleged physical abuse of his wife.

Plaintiff focuses on three questions for which Martin provided allegedly inaccurate responses. They included whether he was a party to any legal proceeding, whether he was aware of any fact that could change his occupation or financial stability and whether he had been convicted (or had charges pending) for a felony or misdemeanor. Martin answered no to all three questions and plaintiff insists these were false answers.

In opposition, defendants contend that plaintiff failed to submit any documentation about its underwriting practices that could show it would not have issued these policies if Martin had answered “yes” to the three questions cited above. They claim that there is no connection between the alleged misrepresentations and the coverage sought.

Defendants contend that plaintiff’s reliance on “common sense” to disclaim coverage and void the policies does not support its summary judgment motion. With respect to the Medicare fraud issue, defendants contend that there is no evidence that he was engaged in such fraud when he answered this question (April 12, 2018) although they acknowledge that he was later indicted for Medicare fraud. Defendants also admit that Martin pled guilty but argue that the question, which was about financial stability, was ambiguous and that Martin had no obligation to answer in the affirmative about financial risks.

Defendants also claim that Martin’s answer about his involvement in legal proceedings was not false. They claim that Martin was not served with the divorce proceeding papers until

after he filled out the disability insurance applications and that the breach of contract dispute with a former business partner has nothing to do with disability insurance coverage.

Defendants claim that Martin's failure to disclose an assault charge from March 2018 was not material to disability coverage. And they argue that plaintiff failed to meet its burden because it did not attach a copy of Martin's application to the policies when they were issued.

In reply, plaintiff asks the Court to view the misrepresentations as a whole and insists that no reasonable insurer would issue policies under these circumstances. It stresses that Martin pled guilty to Medicare fraud and the time period when this took place (2015 through 2019) directly implicates his application for disability coverage. Plaintiff claims that a reasonable person in Martin's position would have known that engaging in fraud would put his medical license in jeopardy as well as the financial status of his medical practice.

Discussion

“To establish its right to rescind an insurance policy, an insurer must demonstrate that the insured made a material misrepresentation. A misrepresentation is material if the insurer would not have issued the policy had it known the facts misrepresented. To establish materiality as a matter of law, the insurer must present documentation concerning its underwriting practices, such as underwriting manuals, bulletins, or rules pertaining to similar risks, that show that it would not have issued the same policy if the correct information had been disclosed in the application. Even innocent misrepresentations, if material, are sufficient to allow an insurer to defeat recovery under the insurance contract” (*Thandi v Otsego Mut. Fire Ins. Co.*, 199 AD3d 849 [2d Dept 2021], lv to appeal denied, 38 NY3d 905 [2022]).

However, under certain circumstances, the misrepresentations may be so substantial that “there is no need for a hearing to introduce evidence of the insurer's underwriting rules or

practices” (*Equit. Life Assur. Soc. of U.S. v O’Neil*, 67 AD2d 883, 884, 413 NYS2d 714 [1st Dept 1979]).

The three questions on the application at issue are as follows:

- “1. Are you a party to any legal proceeding?
2. Are you aware of any fact that could change your occupation or financial stability?
3. Have you ever been convicted of any felony or misdemeanor or do you have any charges pending?” (NYSCEF Doc. No. 51).

As an initial matter, the Court finds that the responses about legal proceedings and the misdemeanor assault charge are not material misrepresentations as they have nothing to do with disability insurance. It is unclear whether or not Martin was served with the divorce proceeding before filling out the applications but, even if he was, plaintiff did not meet its burden to show why it would have denied the request for coverage based on such a proceeding. Plaintiff’s convoluted attempt to argue about financial issues related to the divorce is without merit, especially because plaintiff did not submit any underwriting guidelines about this issue. Similarly, the existence of a lawsuit where plaintiff was affirmatively suing his former business partner is not a material misrepresentation as plaintiff did not sufficiently establish why this would compel it to not issue the policies.

The assault charge involving Martin and his wife is not a material misrepresentation that compels the Court to grant the instant motion either. To be sure, the circumstances surrounding this domestic dispute are quite disturbing. But the existence of such a charge at the time Martin filled out the applications is not a basis to void these policies because, again, plaintiff submitted

no underwriting guidelines to show that it does not issue disability policies for people who have been accused of domestic violence.

The central issue on this motion is the Medicare fraud. Defendants insist that Martin's plea is vague about the timeline when the fraud was occurring and that there is no evidence it happened prior to the time of these applications in April 2018. And they insist the question about his occupation or financial stability is too vague. The Court finds that, as a matter of law, Martin's negative response constituted a material misrepresentation that justifies plaintiff's rescission of the policies.

The fact is that at Martin's allocution the relevant time period for the fraud was between June 2015 and September 2019 (NYSCEF Doc. No. 64 at 36). Defendants' attempt to parse Martin's allocution is not sufficient to compel the Court to deny the instant motion. Medicare fraud clearly and obviously implicates a doctor's ability to maintain his license and run a successful practice. Critically, the Court observes that Martin admitted that Medicare patients made up more than 80 percent of his business (NYSCEF Doc. No. 66 at 281-83). That means that, at the time he filled out the application, Martin had a significant and substantial reason to think that if his Medicare scheme was discovered, it would materially impact the financial health of his business and possibly implicate his medical license.

Plaintiff did not need to submit underwriting guidelines to show that it would not have issued a policy to a doctor actively engaging in Medicare fraud. And the Court finds that defendants' assertion that the applications were not attached to the policies is not a basis to deny the instant motion; plaintiff included policies with the applications attached in discovery.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted and the counterclaims and affirmative defenses are dismissed; and it is further

DECLARED that the subject policies are void ab initio and rescinded and defendants may not seek coverage under the subject policies; and it is further

ORDERED that plaintiff is entitled to costs and disbursements upon presentation of a bill of costs to the County Clerk.

5/1/2023
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT REFERENCE