

Ferster v Prudential Ins. Co. of Am.

2024 NY Slip Op 32130(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 653118/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

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CHASSIDA FERSTER,

Plaintiff,

- v -

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA and THE BANK
OF NEW YORK MELLON, as trustee of the
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS INSURANCE
TRUST,

Defendants.

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INDEX NO. 653118/2022

MOTION DATE 06/18/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for Protective Order.

Defendants’ motion for a protective order is denied.

Background

Plaintiff brings this case concerning a life insurance policy issued to her now-deceased spouse. She contends that the \$2 million policy was issued in June 2008 and that defendants improperly terminated the policy for nonpayment. Plaintiff alleges that defendants failed to include a credit of over \$1,000 for the 2019-2020 certificate year which, had it been applied, would have more than covered the outstanding amount of \$286.28 due for the 2020-2021 certificate year. Plaintiff also argues that under an emergency regulation issued during the COVID-19 pandemic, insureds were granted a 12-month period to pay premiums if they were experiencing financial hardship. She insists that her spouse was indeed experiencing financial

hardship. Plaintiff also complains that her spouse was only given 12 days' notice prior to the termination of the policy.

Defendants move for a protective order in connection with two deposition notices served by plaintiff. They contend that this is a simple case about a group life insurance policy where the insured failed to pay his contributions (similar to premiums) and his estranged wife is now seeking the proceeds of this policy. Defendants contend that the deposition notices improperly seek information about the inner workings of defendants, which include the insurer, the trustee and the trust. They also claim the notices are untimely.

With respect to the application of a credit issue, defendants observe that refunds were not issued to individuals until February 2021 (after the policy at issue was cancelled). They also suggest that plaintiff's spouse received a refund check and had nearly a month to reinstate his cancelled coverage but did not do so.

Defendants argue that the deposition topics included in the aforementioned notices are not intended to reveal relevant discovery. They insist that plaintiff seeks information about overbroad issues, such as details concerning group life insurance policies generally rather than the policy at issue here.

In opposition, plaintiff complains that defendants have refused to produce anyone for a deposition and the instant motion practice is an effort to stonewall plaintiff's discovery efforts. She observes that she is merely asking for a deposition from each of the defendants as is typical practice under the CPLR. Plaintiff insists that she noticed certain individuals for depositions based on documents received from defendants during the course of discovery. She contends that she plans on asking pertinent questions and that her deposition notices are timely.

In reply, defendants assert that the depositions are irrelevant and untimely. They contend that the documents show why the refund was not applied to the cancelled coverage and that it is “public knowledge” how the trust processes refunds. Defendants suggest that if plaintiff wants information about a certain key dates, defendants could produce an affidavit or the Court could offer a supplemental interrogatory.

Discussion

CPLR 3103(a) provides that “The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

The Court denies the instant motion. There is no dispute that defendants have not produced anyone for a deposition. Accordingly, they cannot complain that holding depositions of named parties is somehow indicative of unreasonable annoyance or expense. It is axiomatic that in civil litigation, parties are routinely deposed.

That defendants claim that documents can answer many of plaintiff’s questions is wholly without merit. Surely, all parties in civil litigation (both plaintiffs and defendants) would relish the chance to avoid depositions by claiming that documents could suffice. Depositions are necessary to explore the meaning and context of documents and to preview what may occur at a trial (should the case advance to that stage). The Court finds that defendants’ objections to these depositions are rooted either in their aversion to being deposed or focus on the merits of the case. But defendants’ belief about the strength of their defenses is not a basis to limit discovery; rather, it is a basis to file a dispositive motion.

And while defendants have concerns about the scope of the deposition topics, that theoretical possibility is not a basis to grant a protective order. The fact is that in this state, liberal disclosure is encouraged (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d 157 [2018]). Nothing in the deposition notices or in plaintiff's opposition suggests that plaintiff plans to ask questions that are palpably improper or wholly irrelevant. Plus, nothing prevents defendants from making appropriate objections during the deposition subject, of course, to the typical rules governing such objections. In any event, there is no basis to prevent the taking of these depositions altogether or prematurely limiting the scope of a party deposition.

The Court also rejects defendants' arguments that the deposition notices are untimely. Defendants point to a September 2023 order that set a discovery cut off date of February 29, 2024. But there is no dispute that the parties engaged in discovery well after this deadline and even entered into a discovery stipulation in May 2024 (NYSCEF Doc. No. 54) which omitted any reference to an end date for discovery. Clearly, the parties continued the discovery process well after this deadline; defendants cannot now, months later, seek the benefit of a deadline that both parties ignored. Most critically, the note of issue has not been filed nor has this Court ordered that one be filed.

Summary

Defendants have not yet made a dispositive motion – instead they insist, despite the CPLR and longstanding custom and practice, that they should not have to be deposed in this civil litigation. That position is wholly without merit.

Accordingly, it is hereby

ORDERED that the defendants' motion is denied in its entirety and the aforementioned depositions must take place on or before July 29, 2024 or appropriate penalties may be imposed.

See NYSCEF Doc. No. 59 concerning the next conference.

6/24/2024

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE