

Liberty Mut. Ins. Co. v Connan
2024 NY Slip Op 35592(U)
April 12, 2024
Supreme Court, Nassau County
Docket Number: Index No. 605322/23
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 2

LIBERTY MUTUAL INSURANCE COMPANY,

Petitioner,

-against-

LOUIS CONNAN,

Respondent.

Index No.: 605322/23
Motion Sequence...02
Motion Date...11/08/23
XXX

Papers Submitted:

Notice of Motion.....X

Affirmation in Opposition.....X

Reply Affirmation.....X

Upon the foregoing papers, the application by the Petitioner, LIBERTY MUTUAL INSURANCE COMPANY (“Liberty Mutual”), seeking an Order: (i) pursuant to CPLR §2221(d), for leave to reargue the prior decision of this Court dated August 14, 2023 (“Prior Order”), which denied Petitioner’s motion (Seq. 01) to stay the arbitration and directing Respondent to comply with discovery, and upon reargument, granting Petitioner’s motion; or, in the alternative, the Petitioner moves pursuant to CPLR 2221(e) to renew its prior application on the grounds that “new evidence is now available which was not included with petitioner’s prior application, namely a letter that was sent to respondent’s counsel by the petitioner on or about August 31, 2021 requesting discovery

including an Examination Under Oath and Independent Medical Examination”, is **DENIED.**

In support of the branch of the motion which seeks reargument, counsel for the Petitioner solely argues that the Court “misapprehended and overlooked the facts and/or law in that petitioner is greatly prejudiced if discovery rights are denied and would be unfairly and inadequately represented at an arbitration without the necessary discovery...” The Petitioner does not state what facts or law the Court “misapprehended” or “overlooked”. The Petitioner appears to argue that it is entitled to the relief requested because it would otherwise be greatly prejudiced. This is not a ground upon which reargument may be granted.

As to the branch of the motion seeking renewal, counsel annexes a letter dated August 31, 2021 which purports to represent the Petitioner’s alleged “request for discovery” including an EUO, physical examination and authorizations. A plain reading of the letter reveals that the Petitioner requested four (4) items of discovery and merely reserved its right to an EUO and physical exam. It has already been established that the four (4) items of discovery were indeed provided by Respondent’s counsel. However, the reservation of rights is not a “request” to conduct an EUO or physical exam. It is undisputed that the Petitioner never designated a physician for an IME nor did it ever schedule or definitively request that an EUO be held. Stating that the Petitioner is reserving its right is not the same as making the demand. This can be seen from the August 31, 2021 letter itself – the discovery requests are numbered “1” through “4” in the

first part of the letter; and underneath that the Petitioner “reserves” its right to additional discovery. Under Petitioner’s reasoning the arbitration of this matter could be held up indefinitely which would unduly prejudice the Respondent.

Additionally, the August 31, 2021 letter was clearly within Petitioner’s possession at the time the underlying Petition was filed and the Petitioner fails to proffer a reasonable excuse for why the letter was not previously provided. The only purported reason proffered is that the attorney “believed letter [*sic*] was unnecessary as the petition for further discovery was filed timely and prior request for discovery had been sent. The inadvertent omission of the letter resulted in the Court not having key facts regarding the matter.” The Court does not see the “key facts” that the letter is supposed to demonstrate.

The gravamen of the Prior Order was that the Petitioner neglected to duly demand the discovery it first sought in the Petition to stay arbitration. That is, the Petitioner had plenty of opportunities to demand the additional discovery sought by the Petition, yet failed to do so. The record before the Court in deciding the underlying Petition revealed that the Respondent complied with every discovery demand made by the Petitioner prior to the filing of the Petition. The Respondent has now provided the Court with even more evidence of such compliance on Respondent’s part.

The Court is not going to repeat and reallege the extensive discovery the Respondent provided the Petitioner with prior to commencement of the within proceeding.

Lastly, the Petitioner improperly submitted an affidavit for the first time on

reply, which should not be considered by the Court. In any event, it does not establish the Petitioner's entitlement to the relief requested.

In sum, there is no basis to disturb this Court's Prior Order.

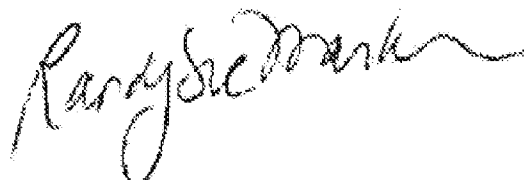
Accordingly, it is hereby

ORDERED, that the application by the Petitioner, LIBERTY MUTUAL INSURANCE COMPANY, seeking an Order, pursuant to CPLR §2221(d), for leave to reargue the prior decision of this Court dated August 14, 2023, which denied Petitioner's motion (Seq. 01) to stay the arbitration, is **DENIED**, in its entirety; and it is further

ORDERED, that the application by the Petitioner seeking an Order, pursuant to CPLR 2221(e), for leave to renew the prior decision of this Court dated August 14, 2023, is **DENIED**, in its entirety.

This constitutes the decision and order of the Court.

DATED: Mineola, New York
April 12, 2024



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED

Apr 15 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE