

American Transit Ins. Co. v Cano

2012 NY Slip Op 31608(U)

June 13, 2012

Sup Ct, New York County

Docket Number: 113160/2011

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING
J.S.C. Justice

PART 44

American Trans
-v-
Caro

INDEX NO. 113160/11
MOTION DATE 4/23/12
MOTION SEQ. NO. 2

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

JUN 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/13/12

met, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 44

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

Index No. 113160/2011

- against-

DECISION AND ORDER

BRIAN CANO, 24/7 EMERGENCY CARE, P.C., AHS
HOSP CORP MMH, ARMAC INC., HAKAN M. KUTLU,
MD, JOSEPH DEBELLIS, MD, MEMORIAL
RADIOLOGY ASSOC, LLC, MORRIS IMAGING ASSOC.
II, P.A., MORRISTOWN MEMORIAL HOSPITAL,
STONY BROOK EMERGENCY PHYSICIANS UFPC /
CLINICAL PRACTICE MP, SOUTHAMPTON
HOSPITAL, SOUTHAMPTON RADIOLOGY, P.C.,
STONY BROOK UNIVERSITY HOSPITAL AND TRI-
COUNTY ORTHOPAEDIC AND SPORTS MEDICINE,
P.A.,

Defendants.

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Background

By complaint dated November 16th, 2011, Plaintiff American Transit Insurance Company seeks a declaratory judgment stating (1) Defendant Brian Cano is not an eligible injured person entitled to no-fault benefits under an insurance policy with the Plaintiff, (2) that Plaintiff is not required to provide, pay or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under said insurance policy, and (3) that Plaintiff is not obligated to honor or pay claims for reimbursement submitted by any of the Defendants listed above. Plaintiff alleges that Defendant Brian Cano, who was allegedly involved in an automobile accident, failed to appear for a medical examination, which was a condition precedent to payment under the insurance policy. Accordingly, Plaintiff asserts that Mr. Cano is not entitled to no-fault benefits under the insurance policy. Furthermore, Plaintiff

alleges that the other Defendants, which are comprised of various health care providers that rendered services to Mr. Cano, are also ineligible to receive payments from Plaintiff, due to Mr. Cano's alleged failure to appear for a medical examination.

Defendants AHS Hospital Corp. and Morristown Memorial Hospital now move pursuant to C.P.L.R. § 3211 (a)(8), to dismiss the complaint against Defendants for lack of personal jurisdiction. In their motion, Defendants asserts that Defendant Morristown Memorial Hospital and AHS Hospital Corp., which operates the Hospital, are located in Morristown, New Jersey and do not do any business in New York or have any connection to the State. In opposition to the motion, Plaintiff asserts that Defendant is subject to personal jurisdiction in New York because Defendant seeks compensation from Plaintiff, a New York Insurance Company, as an assignee under a New York policy, pursuant to New York's "No-Fault" laws. For the reasons stated herein, Defendants motion is denied.

Discussion

New York Courts have held that in order to establish whether the exercising personal jurisdiction over a non-domiciliary is proper, it must be determined (1) whether New York's long-arm statute (CPLR 302) confers jurisdiction and (2) whether the exercise of jurisdiction comports with due process. *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y. 2d 210 (2000). CPLR § 302 states, in relevant part, that a court may exercise personal jurisdiction over any non-domiciliary who transacts any business within the state. Furthermore, it has been held that proof of one transaction in New York is sufficient to invoke jurisdiction, even though the Defendant never enters New York, so long as the Defendants' activities were purposeful and there is a substantial relationship between the transaction and the claim asserted. *Deutsche Bank Securities, Inc. v.*

Montana Bd. of investments, 7 N.Y.3d 65 (2006). Finally, New York Courts have held that “the overriding criterion necessary to establish a transaction of business is some act by which the defendant purposefully avails itself of the privileges of conducting activities within New York.” *Enrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501 (2007).

In the instance case, Defendants billed a New York Corporation, in the State of New York, as an assignee under a New York insurance policy and pursuant to New York’s “No-Fault” laws. Thus, Defendants have purposefully transacted business within the state and said transaction is the basis of the claim asserted by Plaintiffs. Furthermore, by seeking compensation under a New York insurance policy in accordance with New York’s “No-Fault” laws, Defendants purposefully availed itself of the privileges of conducting activities within the state. Accordingly, this court’s exercise of personal jurisdiction over Defendants is proper pursuant to CPLR § 302(a)(1).

Furthermore, Defendants’ contacts with the State of New York are such that the exercise of personal jurisdiction comports with due process. The Court of Appeals has held that “Due process is not satisfied unless a non-domiciliary has minimum contacts with the forum state.” *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210 (2000). Paraphrasing the U.S. Supreme Court, the Court of Appeals stated, “the test has come to rest on whether defendant’s conduct and connection with the forum state are such that it should reasonably anticipate being haled into court there.” *Id.* In the case at bar, Defendants established the requisite minimum contacts with this state by billing a New York Corporation pursuant to a New York insurance policy and New York’s “No-Fault” laws and requirements. In so doing, Defendants invoked the privileges and protections of this State and should therefore reasonably anticipate being haled into court here.

Thus, the exercise of personal jurisdiction over defendants conforms to the requirements of due process.

Conclusion

Accordingly, for the aforementioned reasons stated herein, Defendants motion to dismiss for lack of personal jurisdiction is denied. In addition, Plaintiffs request for costs for opposing Defendants motion is denied.

Dated: June 13, 2012

FILED

JUN 18 2012

NEW YORK
COUNTY CLERK'S OFFICE



HON. MILTON A. TINGLING^{C.}
J.S.C.