

Mapfre Ins. Co. of N.Y. v Soltanov
2017 NY Slip Op 31520(U)
July 17, 2017
Supreme Court, New York County
Docket Number: 154051/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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MAPFRE INSURANCE COMPANY OF NEW YORK F/K/A STATE-WIDE INSURANCE
COMPANY, AMERICAN COMMERCE INSURANCE COMPANY, COMMERCE
INSURANCE COMPANY, 21ST CENTURY INSURANCE COMPANY, 21ST
CENTURY CASUALTY COMPANY, 21ST CENTURY PACIFIC INSURANCE
COMPANY, 21ST CENTURY INSURANCE COMPANY OF THE
SOUTHWEST, 21ST CENTURY ADVANTAGE INSURANCE COMPANY F/K/A AIG
ADVANTAGE INSURANCE COMPANY, 21ST CENTURY ASSURANCE COMPANY
F/K/A AMERICAN INTERNATIONAL INSURANCE COMPANY OF DELAWARE,
21ST CENTURY AUTO INSURANCE COMPANY OF NEW JERSEY F/K/A AIG AUTO
INSURANCE COMPANY OF NEW JERSEY, 21ST CENTURY CENTENNIAL
INSURANCE COMPANY F/K/A AIG CENTENNIAL INSURANCE COMPANY, 21ST
CENTURY INDEMNITY INSURANCE COMPANY F/K/A AIG INDEMNITY
INSURANCE COMPANY, 21ST CENTURY NATIONAL INSURANCE COMPANY
F/K/A AIG NATIONAL INSURANCE COMPANY, 21ST CENTURY NORTH AMERICA
INSURANCE COMPANY F/K/A AMERICAN INTERNATIONAL INSURANCE
COMPANY, 21ST CENTURY PINNACLE INSURANCE COMPANY F/K/A AIG
INTERNATIONAL INSURANCE COMPANY OF NEW JERSEY, 21ST CENTURY
PREFERRED INSURANCE COMPANY F/K/A AIG PREFERRED INSURANCE
COMPANY, 21ST CENTURY PREMIER INSURANCE COMPANY F/K/A AIG
PREMIER INSURANCE COMPANY, 21ST CENTURY SECURITY INSURANCE
COMPANY F/K/A NEW HAMPSHIRE INDEMNITY COMPANY, INC., FARMERS
INSURANCE COMPANY OF ARIZONA, FARMERS NEW CENTURY INSURANCE
COMPANY, FARMERS INSURANCE EXCHANGE, MID-CENTURY INSURANCE
COMPANY, TRUCK INSURANCE EXCHANGE, FOREMOST INSURANCE
COMPANY GRAND RAPIDS, MICHIGAN, FOREMOST PROPERTY & CASUALTY
INSURANCE COMPANY, FOREMOST SIGNATURE INSURANCE COMPANY,
BRISTOL WEST CASUALTY INSURANCE COMPANY, BRISTOL WEST INSURANCE
COMPANY AND ANY AND ALL OF THEIR SUBSIDIARIES, AFFILIATES AND/OR
PARENT COMPANIES,

DECISION & ORDER
Index No. 154051/2017

Mot. Seq. 001

Plaintiffs,

- v -

PAVEL SOLTANOV A/K/A PAUL SOLTANOV A/K/A PAUL DADA, YAKOV
SIMKLAYEV, DMITRIY YAKUBBAYEV A/K/A DMITRIY YAUUBBAEN, PS
MANAGEMENT CORP., E&Y RENTAL INC., D&L RENTAL SERVICES INC., DVL
TRADING INC., COMPAS MEDICAL, P.C., JCC MEDICAL, P.C., ALLEVIATION
MEDICAL SERVICES, P.C., JGG MEDICAL CARE, P.C., ADELAIDA PHYSICAL
THERAPY, P.C., MASIGLA PHYSICAL THERAPY, P.C., CHARLES DENG
ACUPUNCTURE P.C., ACTION POTENTIAL CHIROPRACTIC, P.L.L.C., ISLAND
LIFE CHIROPRACTIC PAIN CARE, P.L.L.C., LYONEL F. PAUL, M.D. D/B/A
GENTLECARE AMBULATORY ANESTHESIA SERVICES, JULES FRANCOIS
PARISIEN, M.D., KSENIA PAVOLVA, M.D., DAVID MARIANO, P.T., JEAN
CLAUDE COMPAS, M.D., JAIME GUTIERREZ, M.D. A/K/A JAMIE GUTIERREZ,
M.D., ADELAIDA LAGA, P.T., MARIA MASIGLA, P.T., CHARLES DENG, L.A.C.,
DARREN MOLLO, D.C., ACTIVE CARE MEDICAL SUPPLY CORPORATION,
CORTLAND MEDICAL SUPPLY, INC., EMC HEALTH PRODUCTS, INC., EXCEL
PRODUCTS, INC., FAVORITE HEALTH PRODUCTS, INC., GREENWAY MEDICAL
SUPPLY CORPORATION, HEALING HEALTH PRODUCTS, INC., INFINITY HEALTH
PRODUCTS, LTD, LIDA'S MEDICAL SUPPLY, INC., MAIGA PRODUCTS
CORPORATION, NEW WAY MEDICAL SUPPLY CORPORATION, PRAVEL, INC.,
QUALITY CUSTOM MEDICAL SUPPLY, INC., RIGHT AID MEDICAL SUPPLY,
CORP., TAM MEDICAL SUPPLY CORPORATION, UNLIMITED PRODUCTS, LTD,
VERASO MEDICAL SUPPLY, CORP., VLADENN MEDICAL SUPPLY

CORPORATION

Defendants.

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The motion by plaintiffs for *inter alia* a stay of all current, pending or future no-fault actions, arbitrations, lawsuits or proceedings involving the defendants and directing that plaintiffs are not required to honor any pending or future no-fault bills or coverage relating to defendants is denied.

Background

This matter arises out of plaintiffs' allegations that defendants are operating a complex fraudulent scheme designed to bilk plaintiffs out of millions of dollars in claims for no-fault medical treatment. Plaintiffs argue that this scheme dates back to at least 2004. Plaintiffs theorize that certain defendants, who they identify as Management Defendants, set up a medical corporation that would treat patients who suffered minor injuries in car accidents. Plaintiffs contend that a considerable amount of medical treatment would be billed to plaintiffs and such treatment was either unnecessary or never actually performed.

Plaintiffs further allege that other defendants, called Provider Defendants, would steer these patients to onsite chiropractors and physical therapists who, in turn, would pay kick-backs to the facility. Other defendants, referred to as the Durable Medical Equipment Corporation Defendants, allegedly benefitted when patients were prescribed nonessential medical equipment. Plaintiffs insist that defendants set up a medical facility first at 1468 Flatbush Avenue Brooklyn, New York and later at 1786 Flatbush Avenue, Brooklyn, New York.

Certain defendants (*see* NYSCEF Doc. No. 21) claim that plaintiffs may not rely on CPLR 2201 because the other actions plaintiffs seek to stay are not pending before this Court—they are arbitrations or cases pending in Civil Courts (predominantly in Kings County and Queens County). These defendants insist that plaintiffs should seek a stay before the judges presiding over those actions rather than before this Court. Defendants argue that plaintiffs have not satisfied the elements for a preliminary injunction. Other defendants that provide medical equipment make similar arguments in their opposition (*see* NYSCEF Doc. No. 22).

CPLR 2201

CPLR 2201 provides that “Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” Here, plaintiffs want this Court to stay hundreds of cases pending in Civil Courts (predominantly in Kings County) as well as a few arbitrations (*see* NYSCEF Doc. Nos. 10, 11). This Court declines that request because CPLR 2201 only authorizes a stay of an action pending before it. “We hear from time to time of a court staying an action pending in another court. That procedure should be understood and clarified because it is not the type of relief that CPLR 2201 authorizes. Rather, it is an injunction, which is an exercise of a highly specialized piece of equity jurisdiction that can issue only from a court having such jurisdiction” (Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C2201:2). A preliminary injunction staying an action in another court may be sought pursuant to CPLR Article 63 (*id.*).

CPLR 6301

“The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor” (*Nobu Next Door, LLC v Fine Arts Hous. Inc.*, 4 NY3d 839, 840, 800 NYS2d 48 [2005] citing CPLR 6301)). “Entitlement to a preliminary injunction depend upon probabilities, any or all of which may be disproven when the action is tried on the merits” (*Destiny USA Holdings, LLC v Citigroup Global Markets Realty Corp.*, 69 AD3d 212, 216, 889 NYS2d 793 [1st Dept 2009] [internal quotations and citation omitted]).

Irreparable Harm

Plaintiffs cannot demonstrate irreparable harm because they can be compensated with money damages (*WHG CS, LLC v LSREF Summer REO Trust 2009*, 79 AD3d 629, 630, 915 NYS2d 36 [1st Dept 2010]). To the extent plaintiffs claim that they will never be able to collect on a judgment from the defendants, that claim is mere speculation and a risk in many lawsuits. Plaintiff’s second, third, fourth and seventh causes of action seek money damages based on defendants’ purported conduct and plaintiffs’ remaining causes of action seek declaratory relief. Certainly, requiring plaintiffs to respond to each no-fault claim related to defendants might be expensive; but responding to claims arising out of insurance policies issued by plaintiffs does not constitute irreparable harm. It is a part of plaintiffs’ business. Besides, plaintiffs are not without a remedy; plaintiffs are absolutely entitled contest the validity of the individual claims if they believe that they are a part of the alleged fraudulent scheme.

Plaintiffs’ argument that the risk of inconsistent decisions demonstrates irreparable harm is misplaced. Even if this Court were to ultimately find that plaintiffs established a fraudulent

scheme, that does not necessarily mean that fraud occurred in every single claim pending in Civil Court and the arbitrations. In other words, different decisions in Civil Court might be consistent with reality. At this early stage of the instant action, this Court is unable to find that the threat of inconsistent decisions in hundreds of Civil Court cases, many of which have been pending for many years and are awaiting trials (*see e.g.*, NYSCEF Doc. No. 10 at 12, 17), constitutes irreparable harm.

Balancing of the Equities

Plaintiffs have also not demonstrated that a balancing of the equities tips in their favor. The fact that plaintiffs might have to make certain payments on claims that ultimately may turn out to be fraudulent does not outweigh the fact that doctors and medical equipment providers would receive no payments throughout the entirety of this litigation if the injunction was imposed. Requiring plaintiffs to post a bond does not alleviate this concern because defendants would still not receive any payments, the ultimate relief sought by plaintiffs in this action, until the resolution of this lawsuit. In the absence of an injunction, plaintiffs can still avoid making payments by, as stated above, challenging the validity of claims in the individual pending arbitrations and Civil Court cases, many of which are trial ready.

Summary

There is no doubt that plaintiffs make serious allegations which, if substantiated, detail a fraudulent scheme to deceive plaintiffs into paying out over a million dollars. But a preliminary injunction is a drastic remedy and should not be issued simply because plaintiffs' allegations suggest that defendants engaged in reprehensible conduct. The affidavit of plaintiff's expert, Dr. Brandon (*see* NYSCEF Doc. No. 4), presents a rational and logical theory of defendants' scheme.

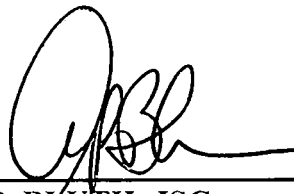
However, a cogent hypothesis of defendants' wrongdoing does not, by itself, satisfy the requirements for a preliminary injunction.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for a stay is denied. The parties are to appear for a preliminary conference on October 3, 2017 at 2:15 p.m.

This is the Decision and Order of the Court.

Dated: July 17, 2017
New York, New York



ARLENE P. BLUTH, JSC