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SJC-13188

LIBERTY MUTUAL INSURANCE COMPANY vs. ALICIA SALAMAN.

December 16, 2021.

Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Liberty Mutual Insurance Company (Liberty Mutual), appeals from a judgment of a single justice of this court denying its petition for extraordinary relief pursuant to G. L. c. 211, § 3, and under the doctrine of present execution. Liberty Mutual sought interlocutory review of a District Court judge's order denying, in part, its motion for summary judgment.¹ We affirm.

The case arises out of a complaint filed in the District Court by the respondent, Alicia Salaman. She alleged that she was injured and her motor vehicle was damaged when a motor vehicle driven by another driver collided with her vehicle. Count one alleged that the other driver was negligent. Count two alleged that Salaman's automobile insurer, Liberty Mutual, violated G. L. c. 90, § 34M, by failing to pay personal injury protection benefits. Count three alleged that Liberty Mutual violated G. L. c. 93A and G. L. c. 176D. Count four asserted claims against the other driver's insurer pursuant to G. L. c. 93A and G. L. c. 176D.

In the District Court, Liberty Mutual moved for summary judgment as to counts two and three, the two counts that assert claims against it. The judge granted the motion with respect to count two, concluding that Salaman had committed a breach of her

¹ The single justice denied as moot Alicia Salaman's motion to compel production of certain documents. That ruling has not been challenged on appeal, and we do not address it.

contract with Liberty Mutual by failing to submit to an examination under oath. He concluded, however, that there was a genuine dispute of material fact concerning Liberty Mutual's conduct in handling Salaman's insurance claim, and denied summary judgment as to count three.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." Id. Liberty Mutual failed to carry its burden.

Liberty Mutual contends that requiring it to go forward as to count three compels it "to engage in frivolous litigation and incur unnecessary costs," thus violating its "rights" relative to the summary judgment entered on count two. The argument, however, "fails to address why the substantive error allegedly committed by the [District Court judge] cannot be remedied on appeal" from a final judgment or by other means, as rule 2:21 requires. DiBiase v. DiBiase, 423 Mass. 1003, 1003 (1996). See Lavoie v. A Justice of the District Court Dep't, 484 Mass. 1055, 1055 (2020) ("merits of the underlying legal issues that formed the basis for the summary judgment motion may be reviewed on appeal"); Elles v. Zoning Bd. of Appeals of Quincy, 450 Mass. 671, 675 (2008). That Liberty Mutual may consider further litigation wasteful or inexpedient does not necessarily negate the efficacy of the ordinary trial and appellate process to vindicate its position. See Bishay v. Clerk of the Superior Court in Norfolk County, 476 Mass. 1017, 1018 (2017); Rosencranz v. Commonwealth, 472 Mass. 1011, 1012 (2015). And if, as it claims, it is forced to defend against frivolous litigation, it will have appropriate remedies available. See, e.g., G. L. c. 231, § 6F. Further, to the extent Liberty Mutual believed, as it now contends, that the District Court judge's denial of summary judgment was subject to the doctrine of present execution, its remedy was to file a notice of appeal and pursue an immediate appeal as of right in the Appeals Court. See McMenimen v. Passatempo, 452 Mass. 178, 186-187 (2008) (petitioner alleging right to appeal under doctrine of present execution not entitled to relief under G. L. c. 211, § 3; "there was nothing at all preventing him from asserting his claim that the doctrine of present execution applied by filing a notice of appeal and testing the applicability of the doctrine in the trial court and, if necessary, in the appellate court, if he believed it applied to his situation"). See also Elles v. Zoning Bd. of Appeals of Quincy, 450 Mass. 671, 674-675 (2008).

The court's extraordinary power of general superintendence is exercised sparingly. It should not be invoked simply to shortcut the ordinary process of trial and appeal. See, e.g., Marley v. Bank of N.Y., 483 Mass. 1027, 1029 (2020); Pollack v. Kelly, 372 Mass. 469, 470-471 (1977) (interlocutory rulings generally not considered until case is ripe for final judgment; "court has been needlessly burdened in the last few years by these foredoomed, and therefore futile and unsuccessful, premature attempts to obtain appellate review of interlocutory matters"). See also Wright v. Department of Correction, 487 Mass. 1025, 1026 (2021); Cappadona v. Riverside 400 Function Room, Inc., 372 Mass. 167, 169-170 (1977). Liberty Mutual failed to demonstrate an appropriate occasion for exercise of the extraordinary power of general superintendence.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Jessica Bobb for the petitioner.