Giamundo v Dunn
2015 NY Slip Op 31686(U)
August 7, 2015
Supreme Court, Queens County
Docket Number: 22574-2012
Judge: Robert L. Nahman

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HON. ROBERT L. NAHMAN** IAS PART 19
Justice

MARIA GIAMUNDO,

Plaintiff,

- against -

CLEVELAND DUNN 2ND, ROBERT EARL DUNN, KAREN A. SAUTER INSURANCE AGENCY INC., and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants.

Index No.: 22574-2012

Motion Date: June 16, 2015

Motion Cal. No.: 9

Mot. Seq. Number: 3

Upon the following papers numbered 1 through 29 read on this motion for summary judgment by defendants Karen A. Sauter Insurance Agency Inc., and State Farm Mutual Automobile Insurance Company:

	PAPERS NUMBERED
Notice of Motion/Affirmation-Exhibits/Memorandum.....	1 - 18
Affirmation in Opposition-Exhibits/Memorandum.....	19 - 26
Reply-Exhibit.....	27 - 29

IT IS ORDERED that defendants' Karen A. Sauter Insurance Agency Inc., and State Farm Mutual Automobile Insurance Company, motion for summary judgment dismissing the complaint against them is granted.

In this action, plaintiff seeks to recover damages against the moving defendants for their failure to provide her with the maximum amount of supplementary uninsured/underinsured motorist coverage. It is undisputed that plaintiff used the defendant Karen A. Sauter Insurance Agency Inc., to provide her with automobile insurance with State Farm Mutual Automobile Insurance Company from July 2002 through December 20, 2011, the date of the underlying accident.

It is also undisputed that from July 2002 through December 20, 2011 the limits on plaintiff's supplementary uninsured/underinsured motorist policies were $25,000 per

person and $50,000 per occurrence.

Plaintiff contends that since she stated that she wanted "the best coverage on everything" that the defendants failed to provide her with the amount of insurance coverage that she requested. Plaintiff further contends that since she had worked with Karen Sauter for 20 to 25 years and had an alleged personal relationship with her that she has established that she had the type of "special relationship" with the agency which imposes a special or fiduciary duty upon the broker.

It is further undisputed that plaintiff never read her insurance policy or the bi-yearly renewals that were sent to her over the years from July 2002 through December 20, 2011. It is also undisputed that plaintiff, at the time she obtained the insurance, did not know the term supplementary uninsured/underinsured motorist coverage and that she did not request a specific monetary amount of coverage.

To set forth a case for negligence or for breach of contract against an insurance broker or agent, a plaintiff must establish that a specific request was made to the broker for the coverage that was not provided in the policy or that it had a special relationship with the broker, *Hoffend & Sons, Inc., v Rose*, 7 NY3d 152, 155 (2006). A general request for coverage will not satisfy the requirement, *Id*., at 158.

Once an insured has received their policy, the insured is presumed to have read and assented to it and cannot rely on the broker's word that the policy covers what is requested, *Loevner v Sullivan & Strauss Agency*, 35 Ad3d 392 (2nd Dept., 2006).

In *Hoffend* the insurance provided to the plaintiff covered domestic projects. When plaintiff began a job on a foreign project, he discussed the project with his broker and made clear that the project should be "covered," *Id*. The Court found that this request was not a specific request for a certain type of coverage and granted summary judgment to the defendants, *supra* at 158.

In *Erwig v Edward F. Cook Agency*, 173 AD2d 439 (2nd Dept., 1991), the Appellate Division Second Department held that a policy holder's inquiry to her broker as to whether she had "good coverage" for her child to take the car out of state was not sufficient to impose liability upon the broker since the plaintiff did not make a specific request for coverage that would have provided protection in the event of an accident with an underinsured motorist, and in the absence of a specific request, the defendant had no duty to recommend or obtain that coverage.

Plaintiff contends that *American Building v Petrocelli Group*, 19 NY3d 730 (2012) which held that plaintiff's failure to read and understand the policy was not an absolute bar to recovery, should be applied herein.

However, the facts of *American Building v Petrocelli Group*, can be distinguished from the facts herein. The plaintiff in *American Building* asked the broker to change the current policy that it had, to provide additional coverage for employees for accidental injury. The policy that the broker actually procured was the same one as the plaintiff's previous policy and specifically stated that "this insurance does not apply to actual or alleged ... personal injury to a ... employee," *Id*, at 734. The evidence submitted in that case indicated that no one but employees ever entered the plaintiff's premises, *Id*, at 736. The Court stated that the evidence arguably supported the plaintiff's contentions since the coverage obtained by the defendant, which excluded coverage for injuries to employees hardly made sense *Id*, at 736.

The holding of *American Building v Petrocelli Group* was that there were issues of fact as to whether the plaintiff requested specific coverage for its employees and whether the defendant failed to procure it *Id*, at 737. Immediately after the holding, the Court stated, "[w]e further conclude that plaintiff's failure to read and understand the policy should not be an absolute bar to recovery *under the circumstances of this case." Id*, at 737, *emphasis added*.

"Generally, the law is reasonably settled on initial principles that insurance brokers or agents have a common-law duty to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so; however, they have no continuing duty to advise, guide or direct a client to obtain additional coverage." *Murphy v Kuhn*, 90 NY2d 266, 270 (1997).

Insurance agents and brokers must be licensed, but the are not required to engage in extensive specialized education and training in a manner similar to lawyers, engineers, architects and accountants, *Chase Scientific v NIA Group*, 96 NY2d 20 (2001).

Insurance agents or brokers are not personal financial counselors and risk managers approaching guarantor status and insurance brokers or agents have no continuing duty to advise, guide or direct a client to obtain additional coverage, *Murphy v Kuhn*, 90 NY2d 266, 270 (1997).

Accordingly, the court finds that the evidence submitted by the parties establishes only that plaintiff requested "the best" coverage and did not request a specific amount that would provide protection with an underinsured motorist.

Plaintiff further contends that the defendants should be held to a higher standard since they had a "special relationship."

"Special relationships in the insurance brokerage context are the exception, not the norm," *Voss v The Netherlands Insurance,* 22 NY3d 728 (2014).

In *Murphy*, the Court of Appeals found that particularized situations may arise in which insurance agents, through their conduct or by express or implied contract with customers and clients, may assume or acquire duties in addition to those fixed at common law, (*Murphy*, *supra* at 272). The Court further found that the question of whether such additional responsibilities should be "given legal effect is governed by the particular relationship between the parties and is best determined on a case-by-case basis," *Id*. The Court identified three exceptional situations that might give rise to a special relationship, thereby creating an additional duty of advisement:

> (1) the agent receives compensation for consultation apart from payment of the premiums; (2) there was some interaction regarding a question of coverage, with the insured relying on the expertise of the agent; or (3) there is a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specially relied on" (*id.* [*citations omitted*]).

In *Murphy*, like the case at bar, although the relationship between the parties existed for quite a number of years, there was no evidence submitted sufficient to establish any type of relationship between the parties other than broker/client.

Accordingly, the court further finds that the plaintiff has not established that a “special relationship” existed between her and the defendants.

Dated: August 7, 2015

Robert L. Nahman, J.S.C.