

Encompass Home & Auto Ins. Co. v Makendy

2017 NY Slip Op 32040(U)

September 29, 2017

Supreme Court, New York County

Docket Number: 160580/2015

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

ENCOMPASS HOME & AUTO INSURANCE
COMPANY,

Index No: 160580/2015

Plaintiff,

DECISION AND ORDER

-against-

Motion Sequence: 005

ELIZINDA MAKENDY, MAXIME MAKENDY,
MARCLISH DAVIDSON, ALICE ALARCON,
JEFFERSON JUSTE, BEMBA KEITA, JEAN
ADOLPHE, JOSEPH BLANC, VANESSA BLANC,
SHANA DABADY, JEAN BAPTISTE EDRISZCARD,
JOSEPH CARLINE, STEPHANIE LAURENT, MARIE
LOUIS, ACCELERATED SURGICAL CENTER,
ATLANTIC CHIROPRACTIC P.C., AXIAL
CHIROPRACTIC P.C., BARNET SURGICAL
CENTER, COASTAL ANESTHESIA SERVICES,
CPM MED SUPPLY INC., EFFECTIVE
HEALTHCARE MEDICAL P.C., HUMAN TOUCH
REHAB PT PLLC, ISURPLY LLC, LLJ
THERAPEUTIC SERVICES PT P.C., MAXIM
TYORKIN, MD, MEDICSURG, MIDDLE VILLAGE
DIAGNOSTIC IMAGING P.C., NATASHA KELLY
MD, NEW BEGINNING CHIROPRACTIC P.C.,
PRECISION MEDICAL PRODUCTS INC., PROMPT
MEDICAL SUPPLY INC., SPECIALTY SURGERY
OF SEACAUCUS, STAR OF N.Y. CHIROPRACTIC
DIAGNOSTIC P.C., STATE CHIROPRACTIC P.C.,
TONG LI, MD, P.C., VISION REHAB PT P.C.,
VLADIMIR SHUR, XU GAO ACUPUNCTURE P.C.,
XVV, INC, YEVGENIY MARGULIS, PHD,
AMERICAN ALTERNATIVE INSURANCE CORP.,

Defendants,

-against-

ADDITION ACUPUNCTURE P.C., ADVANCED
RECOVERY EQUIPMENT AND SUPPLIES, LLC,
AHMED MEDICAL CARE P.C., ANGELIC
PHYSICAL THERAPY P.C., AOM MEDICAL
SUPPLY, A.R.A MEDICAL CARE, P.C., APOLLO
IMAGING MANAGEMENT LLC, ATLANTIC

CHIROPRACTIC, PC, AXIAL CHIROPRACTIC
P.C., BROOKLYN CARDIOVASCULAR CARE,
P.L.L.C., CLEAR WATER PSYCHOLOGICAL
SERVICES P.C., DUNAMIS REHAB PT P.C., EAST
SIDE PRIMARY MEDICAL CARE, P.C.,
EFFECTIVE HEALTHCARE MEDICAL P.C.,
EXCEL SURGERY CENTER, L.L.C., HAN XU
ACUPUNCTURE, P.C., HORIZON PT CARE P.C.,
HUMAN TOUCH REHAB, PT, PLLC,
KENSINGTON RADIOLOGY GROUP, P.C.,
LENEX SERVICES INC., LLJ, THERAPEUTIC
SERVICES, P.T. P.C., NEW BEGINNING
CHIROPRACTIC P.C., NOEL BLACKMAN
PHYSICIAN PC, ORTHOPRO SERVICES, INC.,
PARK AVENUE ORTHOPAEDICS, PC,
PRECISION IMAGING OF NEW YORK, P.C.,
PROFESSIONAL CHIROPRACTIC CARE P.C.,
PROMPT MEDICAL SUPPLY, INC., REGENCY
HEALTHCARE MEDICAL, PLLC, SOVERA
MEDICAL SUPPLY, CORP, SP ORTHOTIC
SURGICAL & MEDICAL SUPPLY, INC.,
THERAPEUTIC CHIROPRACTIC SERVICES P.C.,
STATE CHIROPRACTIC, PC, TISBURY
PSYCHOLOGICAL SERVICES P.C., TONG LI, MD,
PC, US TECH REHAB INC., VISION REHAB PT,
P.C., WEALTH OF HEALTH MEDICAL P.C.,
WINTHROP FIRST CARE MEDICAL SERVICES,
P.C., XU GAO ACUPUNCTURE PC,
ACCELERATED SURGICAL CENTER OF NORTH
JERSEY, ANGELICA SARENAS, BARNETT
SURGICAL CENTER, BARRY HUGHES, OR
ASSIST, PA, DANA WOLFSON, LMT, DR. LEE
LOEWINGER, ELECTRO PHYSIOLOGIC
MEDICAL DIAGNOSTICS, PC, EXCEL SURGERY
CENTER, LLC, FRANCES SARIYA, GOTHAM
MEDICAL SERVICES, HAAR ORTHOPEDICS &
SPORTS MEDICINE, HEALTH EAST
AMBULATORY SURGICAL CENTER, ILYCE
MARANGA, JEFFREY BECK, JOHN IOZZIO,
JUAN XU D.B.A. ADDITION ACUPUNCTURE, PC,
KSENIA PAVLOVA, D.O., MAXIMUM
ORTHOPAEDICS AND SPORTS MEDICINE,
MEDRITE URGENT CARE, MIDMARK
DIAGNOSTICS GROUP, NATASHA KELLY, MD,
NEW YORK ORTHOPAEDIC SURGERY &

REHABILITATION, NORTHEAST ANESTHESIA
AND PAIN MANAGEMENT, PDCN EMERGENCY
AMBULANCE, SOUTH DEAN ORTHOPAEDICS,
SPECIALTY SURGERY OF SECAUCUS, LLC,
SPORTS MEDICINE & ORTHOPAEDIC REHAB,
PC, SPINE & ORTHOPAEDIC REHABILITATION
CENTER, TITAN PHARMACY, USAA HEALTH
PRODUCTS, INC., WINTHROP UNIVERSITY
HOSPITAL,

Cross-Claim Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion/Affidavits/Affirmations/ Memoranda of Law annexed	<u>1</u>
Opposition Affidavits/Affirmations/Memoranda of Law annexed	<u>2</u>

ERIKA M. EDWARDS, J.:

Plaintiff Encompass Home & Auto Insurance Company ("Plaintiff") moves for leave to reargue the Decision and Order of the court dated, October 3, 2016, which denied Plaintiff's application to stay multiple arbitrations and other proceedings involving the August 25, 2014, accident that is the subject of the underlying matter. Defendants Sovera Medical Supply, Corp., SP Orthotic Surgical & Medical Supply, Inc., and Ksenia Pavlova, D.O. (collectively "Defendants") oppose the motion. For the reasons set forth herein, the court denies Plaintiff's motion.

Pursuant to CPLR 2221(a) and (d)(2), a motion for leave to reargue is left to the sound discretion of the court and may be granted only where the moving party contends that an issue of law or fact had been overlooked or misapprehended by the court when deciding the original motion (CPLR §§ 2221[a] and [d][2]). It is not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new

evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations and quotation marks omitted]).

Here, Plaintiff argues in substance that the court failed to review all the evidence in support of the motion. Specifically, Plaintiff argues that the court failed to review transcripts of multiple defendants' Examinations Under Oath ("EUOs"). Furthermore, Plaintiff argues that the court failed to consider that Plaintiff would be entitled to relief as a result of the failure of several defendants to appear for EUOs. Defendants oppose the motion and argue in substance that the court should deny Plaintiff's motion because Plaintiff failed to demonstrate that this court overlooked any facts or misapplied any law in reaching its decision. Defendants further argue that Plaintiff's motion to reargue is mere repetition of the arguments within Plaintiff's application for the stay.

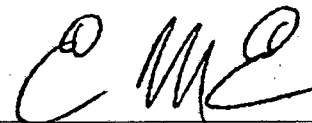
This court finds that Plaintiff failed to set forth a sufficient legal or factual basis to demonstrate that the court overlooked an issue of law or fact. The court properly considered the applicable legal standards and relevant facts and determined that Plaintiff failed to demonstrate a likelihood of success on the merits based on the submitted EUO transcripts and the facts presented to the court at the time of the application. As such, the court denies Plaintiff's motion to reargue.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to reargue is denied.

This constitutes the decision and order of the court.

Date: September 29, 2017



HON. ERIKA M. EDWARDS