

Kaufman v RLI Ins. Co.
2018 NY Slip Op 30491(U)
March 21, 2018
Supreme Court, New York County
Docket Number: 154791/2016
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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ANN KAUFMAN,

Plaintiff,

INDEX NO. 154791/2016

- v -

MOTION DATE 03/21/2018

RLI INSURANCE COMPANY,

Defendant.

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this application to VACATE/STRIKE - JURY DEMAND.

ORDER

Upon the foregoing documents, and upon further deliberation following oral argument, it is

ORDERED that the motion of defendant to strike the jury demand is DENIED.

DECISION

In this action, plaintiff seeks damages for breach of an excess insurance policy with the coverage limit of \$1,000,000. In her complaint, plaintiff alleges that (1) on June 13, 2013, an automobile struck her, a pedestrian, causing her to sustain serious injuries; (2) the insurance carrier for the owner of the offending vehicle paid her \$25,000, the limits of such policy;

(3) the primary carrier for the motor vehicle that plaintiff owned paid her \$ 250,000 in underinsured coverage; and (4) though timely notified, defendant, plaintiff's excess insurance carrier, failed to pay plaintiff's claim for the damages to the extent that they were in excess of the amounts paid to her in the previous settlements.

At oral argument, the parties agreed to submit to the court a copy of a signed a Stipulation dated June 7, 2017 ("Stipulation"),¹ in this action, wherein "Defendant concedes the policy of insurance was in effect and provides excess SUM coverage to Plaintiff for this accident". In the Stipulation, defendant also withdrew its affirmative defenses of failure to join a necessary party; absence of informed consent; lack of plaintiff of capacity to sue; release; statute of limitations; and failure of plaintiff to abide by the policy and give timely notice of the occurrence.

However, in defendant's answer, remaining are other affirmative defenses, including collateral estoppel and res judicata, and a counterclaim that asserts that plaintiff did not comply with the policy provisions that required her to inform defendant of the settlement of the claim with the insurance carrier of the owner of the offending vehicle.

¹ The parties submitted the Stipulation to the court for the first time at oral argument, but such stipulation has not been electronically filed with the court.

Plaintiff does not assert either in her complaint or opposition papers to this motion whether there ever was a prior lawsuit against the owner of the offending vehicle and a finding in settlement or otherwise of her total damages. Plaintiff opposes the motion of defendant to strike her jury demand, arguing that the only issue for trial in this action is the extent of the damages she suffered in the accident, for which she is entitled to a trial by jury.

The court disagrees with plaintiff that the Stipulation, which she offered for the first time at oral argument, in which defendant concedes the policy was in effect, is an admission that she is entitled to coverage under the excess insurance policy of her claim for injuries suffered in the accident. As in Di Stasi v Nationwide Mutual Ins. Co., 132 AD2d 305 (3d Dept. 1987), there is a question concerning coverage, which must be determined by the court, in the first instance.

"In this action for a judgment declaring the parties' rights under an insurance policy, this Court must be guided by the rules of contract interpretation because '[a]n insurance policy is a contract between the insured and insured'

'Generally, the courts bear the responsibility of determining the rights and obligations of parties under insurance contracts based on the specific language of the policies' "

(Gilbane Bldg. Co./TDX Const. Corp. v St. Paul Fire and Marine Ins. Co., 143 AD3d 146, 150-151 (1st Dept. 2016)).

Thus, there is no role for the jury in interpreting an insurance policy. Where the terms are not ambiguous, it would be for the court to decide whether plaintiff's claim is covered under the specific language of the insurance policy, which decision would likewise resolve defendant's counterclaim that alleges that plaintiff breached the insurance policy when she failed to notify defendant of the prior settlement negotiations, depriving defendant of its rights to subrogation.

However, plaintiff is correct that the questions of causation and the amount of her damages, are matters of tort law, which issues she is entitled to have a jury determine. See Martell v North River Ins. Co., 107 AD2d 948 (3d Dept. 1985). Of course, defendant would have the burden of proving its affirmative defenses at trial, including res judicata with

respect to whether there was resolution of damages at a prior action against the owner of the offending vehicle, and whether there was any culpable conduct on the part of plaintiff that contributed to the accident.

3/21/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	<input type="checkbox"/>	DO NOT POST			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE