

Ameriprise Ins. Co. v Sandy

2018 NY Slip Op 30788(U)

May 1, 2018

Supreme Court, New York County

Docket Number: 154816/2015

Judge: Arlene P. Bluth

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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 32

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AMERIPRISE INSURANCE COMPANY,

Plaintiff,

DECISION & ORDER
Index No. 154816/2015

-against-

Mot. Seq. 003

ORAL SANDY, MARK GOLDBERG PROSTHETIC & ORTHOTIC LABS, INC., HILLSIDE CHIROPRACTIC, P.C., TJH MEDICAL SERVICES, P.C., ROBERT Y, PICK, M.D., MPH, INNOVATIVE MEDICAL HEALTHCARE, P.C., REVITALIZING MASSAGE THERAPY, P.C., PHILIP DP ABESSINIO, D.C., ALLEN ROTHPEARL IMAGING M.D., P.C., UNITED NYC MEDICAL ASSOCIATES LLC, W.J.W. MEDICAL, PRODUCTS, INC., JAGGA ALLURI, M.D., THE NEW YORK COMMUNITY HOSPITAL OF BROOKLYN, INC., THE JAMAICA HOSPITAL

Defendants.

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The motion by plaintiff for summary judgment against defendant Oral Sandy (Sandy) is denied and the case is dismissed.

Background

This declaratory judgment action relates to a car accident involving defendant Oral Sandy on May 4, 2014. Sandy was driving that night on the Nassau Expressway in Queens, New York and was involved in a car accident around 3:30 a.m. Plaintiff argues that it should not have to provide coverage to Sandy because he was intoxicated at the time of the accident. Plaintiff also disputes Sandy’s account that there was another vehicle involved in the crash that later drove away from the accident scene.

Plaintiff claims that defendant Sandy appeared for an Examination Under Oath (EUO) and that his wife and Erica Dick (Sandy's mistress) both appeared for EUOs. Plaintiff insists that each witness' accounts of the night of the incident contradict each other. Plaintiff concludes that the accident was not a covered event but rather the result of Sandy's operating a car while intoxicated and possibly under the influence of drugs.

Plaintiff argues that its automobile insurance policy excludes coverage for accidents that occur while the insured is under the influence of alcohol. Plaintiff notes that Sandy's blood alcohol level was 0.24, three times the legal limit in New York. Plaintiff also contends that Sandy misrepresented how the accident occurred in order to receive coverage. Plaintiff claims that Sandy testified that his car was hit from behind by a mysterious vehicle but that there is no evidence to show the car was hit in the rear.

Discussion

Plaintiff previously brought a motion seeking to stay a related arbitration proceeding arising out of the car accident. This Court denied the motion and held that "Sandy is entitled to go to arbitration to resolve this disagreement. Plaintiff fails to provide a convincing argument to circumvent this clear and unambiguous arbitration provision. Plaintiff will have the opportunity to argue before the arbitrator that it need not provide coverage, that Sandy was drunk, and its theory that Sandy lied about being hit by another vehicle" (NYSCEF Doc. No. 90 at 4).

Here, plaintiff fails to explain how the instant motion is anything other than a rehashing of the Court's previous decision.¹ Of course, plaintiff now moves for summary judgment instead of a temporary restraining order— but that does not change the fact that this Court has already found that Sandy is entitled to arbitrate. If he can arbitrate, then what would be the purpose of considering a summary judgment motion about the same exact issues? The key factual determinations will be the same for the arbitration and the instant motion: whether Sandy was hit by another car and whether he was drunk.

To consider the instant motion would defeat the entire purpose of the arbitration process. Plaintiff could simply avoid arbitration by bringing a declaratory judgment action on the same issue and delay the arbitration hearing until the Court makes a decision. Plaintiff's reply papers similarly ignore the Court's previous decision. And plaintiff does not deny Sandy's claim (made in his opposition papers) that an arbitration was scheduled for February 2018.

Moreover, as defendants point out, plaintiff filed a petition in Queens County seeking to stay the arbitration at issue here. That Court denied plaintiff's petition as untimely and the Second Department agreed, finding that plaintiff's "proceeding was not commenced within 20 days of the receipt of the November 2, 2015 notice of intent to arbitrate" (*Ameriprise Ins. Co. v Sandy*, 158 AD3d 623, 624, 70 NYS3d 554 [2d Dept 2018]). The Second Department also rejected plaintiff's claim that Sandy's notice of intent to arbitrate was deceptive (*id.* at 625).

Clearly, plaintiff has tried just about every possible way to avoid the arbitration. This Court will not allow plaintiff to circumvent a clear arbitration provision or a decision by the

¹The Court will consider Sandy's opposition papers even though they were filed late because there is no prejudice to plaintiff who submitted reply papers responding to Sandy's submission.

Appellate Division by asking this Court to make a determination about the same disputed facts at issue in an arbitration.

Accordingly, it is hereby

ORDERED that the parties proceed to arbitration forthwith. And it is further

ORDERED that, as there is nothing left to resolve in this case, this action is DISMISSED.

Nothing herein precludes the parties, after the arbitrator renders a decision, from bringing a special proceeding pursuant to CPLR Article 75.

This is the Decision and Order of the Court.

Dated: May 1, 2018
New York, New York



HON. ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH
J.S.C.