

**Yong Soon Oh v American Bankers Ins. Co. of  
Florida**

2018 NY Slip Op 31837(U)

August 2, 2018

Supreme Court, New York County

Docket Number: 154835/2017

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  
NEW YORK COUNTY.

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32  
Justice  
-----X

YONG SOON OH

Plaintiff,

- v -

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA C/O  
ASSURANT GROUP,

Defendant.

INDEX NO. 154835/2017

MOTION DATE

MOTION SEQ. NO. 001

DECISION AND ORDER

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 were read on this motion to/for Determine scope of deposition

This is an action pursuant to Insurance Law § 3420(a) to collect a judgment obtained against Hua Jin. Plaintiff fell on a sidewalk in Queens and broke her wrist; she sued Mr. Jin, alleging he owned the property and was negligent in maintaining the sidewalk. An insurance company provided a defense to Mr. Jin pursuant his homeowner's policy. In the answer, Mr. Jin admitted to ownership of the property. Mr. Jin never appeared for a deposition and was precluded from testifying at trial.

After the note of issue was filed, Jin's counsel sought to amend the answer to deny ownership at the time of the accident. The Supreme Court, Queens County allowed

~~Boyd~~ 1/04

the amendment and *sua sponte* made it a conditional order of preclusion, giving Mr. Jin another opportunity to appear for a deposition. The Appellate Division, Second Department reversed, finding that there was no good basis to allow the amendment and that it was improper to remove the preclusion. Therefore, Jin was stuck admitting ownership of the property.

Instead of sticking it out and appearing to contest damages, Jin's attorneys moved to be relieved from the case and the motion was granted. The matter proceeded to inquest and plaintiff was awarded a judgment of \$514,382.78. As that judgment was unsatisfied, plaintiff brought this action against the insurer.

The issue before this court is not the ultimate issue in the case. Rather, the issue is the scope of the questions that can be asked of plaintiff at her deposition. From the papers and oral argument, defendant has represented that it will not ask any questions about the accident itself; it will not ask what she tripped on or delve into the issue of sidewalk defect, for example. The plaintiff has agreed to allow defendant to ask questions about the disclaimer; if plaintiff was a complete stranger to Jin, then that line of questioning will undoubtedly be short. If she was aware of Jin or the family living in or owning the premises, then the questions may take longer.

The issue left for this court to decide is whether defendant may ask plaintiff about her damages. Plaintiff claims that ship has sailed and the proper way to contest damages

is to move to vacate the inquest and have another inquest, and if that motion is denied, then to appeal the denial. However, defendant claims it has no basis to make such a motion in that Queens case; this defendant is an insurance company and was not a party to that litigation. Defendant claims that because courts have the inherent authority to review damages awarded, even at an inquest, this court should allow defendant to question plaintiff as to her damages.

The court understands that defendant is in a pickle; it assigned counsel to represent Mr. Jin and that counsel admitted ownership, perhaps without ever speaking to Mr. Jin or conducting a search about ownership of the house. But this court does not have the authority to review an inquest award and judgment from Supreme Court; only the Appellate Division has that power.

Moreover, defense counsel, assigned by defendant here, instead of appearing at the inquest and cross-examining plaintiff to contest her damages, chose to move to get off the case. This allowed plaintiff's proof at the inquest go unchallenged. Certainly, it was in Mr. Jin's interest to challenge the proofs. As it turns out, it was in defendant's interest to challenge the proofs, too. Defendant's assigned counsel declined to challenge plaintiff's proof at the inquest; it would be improper to allow defendant to, in effect, get another chance to challenge plaintiff's damages in this forum. Because defendant cannot attack the judgment after inquest in this case, it cannot ask her about her damages at the deposition.

Accordingly, it is

ORDERED that defendant may ask questions of plaintiff regarding the validity of the disclaimer but may not ask her questions about her damages at her deposition in this case. Depositions must be completed before the next conference unless good cause is shown.

Conference is scheduled for October 30, 2018 at 2:15 PM.

8/2/2018

DATE

ARLENE P. BLUTH, J.S.C.

**HON. ARLENE P. BLUTH**

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
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"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE