

Liberty Mut. Ins. Co. v Dillard
2021 NY Slip Op 30133(U)
January 5, 2021
Supreme Court, Kings County
Docket Number: 517259/2018
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, On the 5th day of January 2021

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X
LIBERTY MUTUAL INSURANCE COMPANY

Petitioner,

-against-

HELENA D. DILLARD,

Respondent.
-----X

Index No.: 517259/2018

DECISION AND ORDER

Motions Sequence #2

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KINGS COUNTY CLERK
FILED

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

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	13-18
Opposing Affidavits (Affirmations)	19-24
Affirmation or Affidavit in Reply	25-27

After a review of the papers and oral argument the Court finds as follows:

This is a claim for alleged personal injuries resulting from a motor vehicle accident that occurred on May 31, 2015 in Brooklyn, New York. The Petitioner, Liberty Mutual Insurance Company (hereinafter referred to as the "Petitioner") moves (motion sequence #2) for an order pursuant to CPLR 7503, staying the arbitration demanded by the Respondent, Helena D. Dillard (hereinafter referred to as the "Respondent") for her failure to comply with a stipulation of the parties dated August 9, 2019, or alternatively, directing the Respondent to provide all relevant discovery prior to the arbitration being held.

The Petitioner argues that the subject Petition to stay arbitration was amicably resolved by a stipulation of the parties dated August 9, 2019 (hereinafter referred to as the "Stipulation"). The Stipulation provided that the Respondent would provide certain authorizations within fifteen days of the date of the Stipulation. Further, the Petitioner claims that it requested (i) authorizations from the Respondent for her medical records for a period of six years prior to the accident; and (ii) an affidavit of no excess coverage from the driver of the offending vehicle.

The Respondent contends that she has provided an authorization regarding a prior no-fault file to the Petitioner by letter dated February 20, 2020, in accordance with the Stipulation. The Respondent also argues that the Petitioner is not entitled to the Respondent's primary care records for six years prior to the accident, especially since the Respondent stated in her Examinations Under Oath that she did not consult or treat with her primary care physician regarding her injuries following the accident. The Respondent further argues that since there is no claim for a loss of enjoyment of life, the Petitioner is not entitled to obtain the Respondent's medical history. In relation to the affidavit of no excess, the Respondent alleges that it is not possible to acquire same since the Respondent came to an amicable resolution of her dispute with the driver of the offending vehicle, Jose Bermudez (hereinafter referred to as "Bermudez"). The Respondent states that at the time of that settlement the Respondent had retained other counsel to address the matter and prior counsel did not obtain the affidavit. However, the Respondent did provide a Tender Letter and policy limits verification letter.

The Petitioner argues that it is entitled to authorizations for the Respondent's primary care records because the Respondent was involved in two accidents; one in April of 2015 and one in May of 2015. The Petitioner contends that the Respondent's statements during her Examination Under Oath, regarding the injuries she suffered in the April 2015 accident, conflict with the contents of her application for PIP benefits in relation to the April 2015 accident and the report of her attending physician at Graham Wellness

Medical in relation to the April 2015 accident. As such, the Petitioner contends that the Respondent's testimony during the Examination Under Oath, that she did not injure her left shoulder as a result of the April 2015 accident, cannot be relied upon.

“On a motion to compel or stay arbitration, a court must determine, ‘in the first instance... whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement’” (*Degraw Constr. Group, Inc. v. McGowan Bldrs., Inc.*, 152 AD3d 567, 58 N.Y.S.3d 152, quoting *Sisters of St. John the Baptist, Providence Rest Convent v. Geraghty Constructor*, 67 NY2d 997, 998, 502 N.Y.S.2d 997, 494 N.E.2d 102; see *Brown v. Bussey*, 245 AD2d 255, 255, 666 N.Y.S.2d 15). **“When deciding whether the parties agreed to arbitrate a certain matter ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts”** (*First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L.Ed.2d 985; see *Arthur Andersen LLP v. Carlisle*, 566 U.S. 624, 129 S. Ct. 1896, 173 L.Ed.2d 832; *Degraw Constr. Group, Inc. v. McGowan Bldrs., Inc.*, 152 AD3d at 569, 58 N.Y.S.3d 152). **“Arbitration is a matter of contract, ‘grounded in agreement of the parties’”** (*Matter of Belzberg v. Verus Invs. Holdings Inc.*, 21 NY3d 626, 630, 977 N.Y.S.2d 685, 999 N.E.2d 1130 [citation omitted] quoting *County of Sullivan v. Edward L. Nezelek, Inc.*, 42 N.Y.2d 123, 128, 397 N.Y.S.2 371, 366 N.E.2d 72).

Mozacchio v. Schamzner, 2020 N.Y. Slip Op. 06522, 2020 WL 6601906 [2d Dept 2020].

This dispute centers on whether the Respondent must provide authorizations for her primary care records for the period of six years prior to the subject accident, before the arbitration can proceed. The Stipulation to proceed to arbitration was, in part, premised on the Respondent's production of authorizations for all medical providers (Affirmation in Support of Petitioner's Motion Sequence #2, Exhibit A, Stipulation dated August 9, 2019).

During her Examination Under Oath, the Respondent stated that her left arm and shoulder came into contact with parts of the vehicle during the collision, causing her to be bruised (Affirmation in Support of Petitioner's Motion Sequence #2, Exhibit B, Transcript of Examination Under Oath of Hellen Dillard

on October 4, 2019, pages 14-16) (hereinafter referred to as the “Respondent’s October EUO”). The Respondent said that the severity of the injury required further medical treatment, including physical therapy and left shoulder surgery (Respondent’s October EUO, pages 20-24). The Respondent also stated that she was involved in another accident the month before, during which she hit her chest but did not injure her left shoulder (Respondent’s October EUO, page 32). She also generally contended that she had not injured her left shoulder before the accident in May 2015 (Respondent’s October EUO, pages 33-34).

However, the Petitioner has proffered a copy of the Respondent’s Application for Motor Vehicle No-Fault Benefits relating to the accident in April 2015, wherein the Respondent’s injuries are listed as neck, left shoulder, and lower back (Affirmation in Reply to Petitioner’s Motion Sequence #2, Exhibit A, Respondent’s Application for No-Fault Benefits dated May 20, 2015). The Petitioner has also proffered a medical report dated June 6, 2015 indicating that the Respondent was treated for injuries arising from the April 2015 accident, including shoulder sprain/strain (Affirmation in Reply to Petitioner’s Motion Sequence #2, Exhibit B, No-Fault Insurance Verification of Treatment dated June 6, 2015). Both documents were provided to the Petitioner by the Respondent, as indicated above.

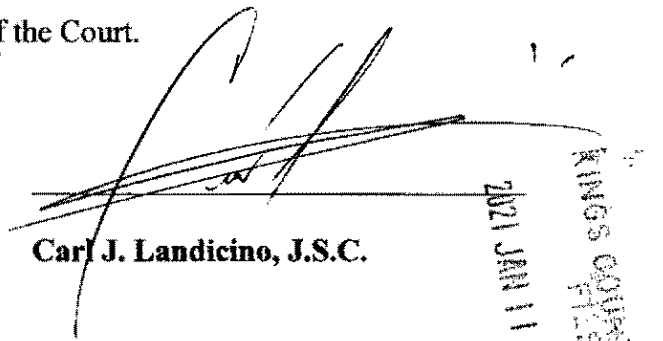
This discrepancy places Respondent’s medical history in contention and further information in relation thereto is material and necessary. See *Nesbitt v. Advanced Service Solutions*, 173 AD3d 1056, 100 N.Y.S.3d 877 (Mem.) [2d Dept 2019] and *Bravo v. Vargas*, 113 AD3d 577, 978 N.Y.S.2d 313 [2d Dept 2014]. Accordingly, the Petitioner’s motion (motion sequence #2) is granted to the extent that the Respondent shall provide Petitioner with authorizations for the Respondent’s primary care records for the period of four years prior to the subject accident. Said authorizations shall not to include any right to Alcohol/Drug Treatment/Mental Health Information/HIV-Related Information.

Based on the foregoing, it is hereby ORDERED as follows:

The Petitioner's motion (motion sequence #2) is granted solely to the extent that the Respondent shall have sixty days from service of Notice of Entry of this Decision and Order to provide the Petitioner with authorizations for the Respondent's primary care records for the period of four years prior to the subject accident. Said authorizations shall not to include any right to Alcohol/Drug Treatment/Mental Health Information/HIV-Related Information. Arbitration of this matter shall be stayed pending compliance herewith.

This Constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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KINGS COUNTY CLERK