Matter of USAA Gen. Indem. Co. v Hayek Chiropractic, P.C.
2017 NY Slip Op 30711(U)
April 10, 2017
Supreme Court, New York County
Docket Number: 153057/16
Judge: Kathryn E. Freed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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In The Matter of the Application of
USAA GENERAL INDEMNITY COMPANY,

Petitioner,

-against-

HAYEK CHIROPRACTIC, P.C., EXCEL SURGERY CENTER, LLC, ONEIDA WORRELL MORRIS, MAHCEL REHAB PT, P.C., LAM MEDICAL, P.C., NY SPORTSCARE, LIFE HEALTH CARE MEDICAL, P.C., SIGMA MED CARE, INC., QUEENS HOSPITAL CENTER, CITIMEDICAL SERVICES, P.C., DIRECT RX PHARMACY, INC., RSW CHIROPRACTIC, P.C., AUTO RX, RIGHT CHOICE SUPPLY, INC., UNIVERSAL DIAGNOSTIC, LLC, MIISUPPLY, LLC, M&M MEDICAL, P.C., BEACON ACUPUNCTURE, P.C.,

Respondent(s).

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DECISION AND ORDER
Index No.153057/16
Mot. Seq. No. 001

KATHRYN E. FREED, J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND BOTT AFFIRMATION IN SUPPORT	1, 2 (Ex. A)
GEWUERZ AFFIRMATION IN SUPPORT	3 (Exs. A-B)
KELLEHER AFFIRMATION IN OPPOSITION	4
BOTT REPLY AFFIRMATION	5

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this declaratory judgment action commenced by plaintiff USAA General Indemnity Company ("plaintiff"), defendant Hayek Chiropractic, P.C. ("Hayek") moves, in effect, to dismiss the complaint, to compel arbitration, and for such other relief as this Court deems just and proper. After oral argument, and after a review of the parties' papers and the relevant statutes and case law,

the motion is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

Defendant Oneida Worrell Morris ("Morris") was allegedly injured in a motor vehicle accident at the intersection of Hollis Avenue and 99th Avenue in Queens, New York on August 19, 2015. Ex. B to Complaint, NYSCEF Doc. No. 1; Complaint at par. 56. The accident allegedly occurred when a car struck the vehicle Morris was driving from behind. Id. At the time of the alleged incident, Morris was the registered owner of the vehicle, which was insured pursuant to a policy issued by plaintiff to James Morris. Complaint, NYSCEF Doc. No. 1, at par. 5; Ex. B to Complaint.

Morris was allegedly injured as a result of the accident and received treatment for those injuries from Hayek, Excel Surgery Center, LLC, Mahcel Rehab PT, P.C., Lam Medical, P.C., NY Sportscare, Life Health Care Medical, P.C., Sigma Med Care, Inc., Queens Hospital Center, Citimedical Services, P.C., Direct Rx Pharmacy, Inc., RSW Chiropractic, P.C., Auto Rx, Right Choice Supply, Inc., Universal Diagnostic, LLC, Miisupply, LLC, M&M Medical, P.C., and Beacon Acupuncture, P.C. ("the medical provider defendants"). Morris thereafter assigned her no-fault benefits under the policy to the medical provider defendants. Ex. A to Bott Aff., at pars. 8-9.

On April 11, 2016, plaintiff commenced this declaratory judgment action against the medical provider defendants, as well as against Morris, seeking a declaratory judgment that it was not required to pay no-fault benefits in connection with the alleged incident. Ex. A to Bott Aff. In its complaint, plaintiff asserted, inter alia, that the medical provider defendants submitted claims for

reimbursement for no-fault benefits which they rendered to Morris. Id., at par. 75. Plaintiff alleged that the alleged accident was not a "covered event" as defined by plaintiff's policy because there was no contact between Morris' vehicle and any other vehicle and/or because the injuries allegedly sustained by Morris did not result from the use or operation of a motor vehicle. Id., at par. 13.

Hayek, one of the medical provider defendants, now moves, in effect, to dismiss the complaint in the captioned action and to compel arbitration. David T. Neuman, MD, PC, doing business as, and sued herein as, NY Sportscare, submits an attorney affirmation by Drew M. Gewuerz, Esq. "supporting and joining" Hayek's motion.[1]

POSITIONS OF THE PARTIES:

Hayek argues that this matter must be dismissed and plaintiff must be compelled to arbitrate since it has the right to arbitrate its dispute with plaintiff pursuant to Insurance Law 5106(b) and 11 NYCRR 65-1.1. In his affirmation in support of the motion, Gewuerz, on behalf of NY Sportscare, substantially corroborates this contention.

In opposition to the motion, plaintiff argues that an arbitrator cannot issue a declaratory judgment. Relying on *Permanent Gen. Assur. Co. v Thomas*, 2016 N.Y. Misc. LEXIS 1339, 2016 WL 1449425 (Sup Ct New York County 2016), plaintiff further asserts that Hayek is not entitled to dismissal of the complaint since the right of an insurer to seek a declaratory judgment pursuant to CPLR 3001 is not mutually exclusive to a medical provider's right to seek arbitration.

In reply, Hayek asserts that it has a contractual right to arbitrate the dispute in question

[1] To the extent NY Sportscare seeks any affirmative relief, this Court cannot grant the same given that it did not file a notice of motion. See CPLR 2214.

pursuant to 5106(b) and NYCRR 65-1.1.

LEGAL CONCLUSIONS:

Insurance Law 5106(b) provides that:

> Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

Section 11 NYCRR 65-1.1 of the New York Insurance Regulations provides as follows:

> Arbitration. In the event any person making a claim for first-party benefits and [plaintiff] do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance.

Given the language of these provisions, Hayek maintains that the captioned action must be dismissed since it has the right to arbitrate its dispute with plaintiff. However, Hayek's right and wish to arbitrate its dispute with plaintiff is separate from plaintiff's declaratory judgment action. An insurer is permitted to commence an action seeking an order declaring that it has no duty to provide no-fault benefits despite a medical provider's statutory right to submit its dispute to arbitration. *See Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559 (1st Dept 2011). "Indeed, 'although the claimant has the option of submitting a no-fault dispute to arbitration, declaratory judgment may be an appropriate vehicle for settling disputes concerning no-fault benefits.' *AIU Ins. Co. v Deajess Medical Imaging, P.C.*, 24 Misc3d 161, 165 (Sup. Ct. Nassau

County 2009)." *Permanent Gen. Assur. Co. v Thomas, supra.*

In *Permanent Gen. Assur. Co.*, this Court (Kern, J.) issued an order granting a motion by medical providers to dismiss a declaratory judgment action against them and compelled the no-fault insurer to proceed to arbitration based on the arbitration provision in its policy. Upon reargument, this Court reversed its prior determination, holding, inter alia, that it:

> erred in dismissing this properly initiated declaratory judgment action as against the moving defendants. Initially, this court can provide greater relief than is available to plaintiff in the underlying arbitrations. While the moving defendants were within their rights to submit their disputes to arbitration * * * those arbitration proceedings only concern the specific claims submitted to arbitration by the individual provider defendants and any holding would be constrained to those claims. A judgment in this action, on the other hand, would determine the validity of any and all current and future claims for no-fault benefits between plaintiff and defendants relating to the alleged accident involving [claimant]. Further, the moving defendants always had the opportunity to commence an arbitration proceeding to resolve a controversy involving a claim for first-party no-fault benefits but such opportunity does not preclude an insurer from commencing a declaratory judgment action seeking a declaration that it has no duty to provide first-party no-fault benefits. Accordingly, the court finds that dismissal of this action as against the moving [medical provider] defendants was not warranted.

Id., at *5.

This Court agrees with Justice Kern's analysis in *Permanent Gen. Assur. Co. v Thomas.* Although Hayek is permitted to seek arbitration consistent with the statute and the regulation, the captioned action "did not remove the ability of the arbitrator to resolve a controversy involving a claim for first-party no-fault benefits as to any specific individual bill. However, plaintiff is permitted to seek a declaration as to its overall duty for coverage." *Hertz Vehs., LLC v Woodhaven Comprehensive Med., P.C.*, 2016 N.Y. Misc. LEXIS 4441 (Sup Ct New York County 2016). Thus, as in *Permanent Gen. Assur. Co. v Thomas*, the motion by the medical provider, here Hayek, seeking

to dismiss the complaint and to compel arbitration, is denied.

In support of its motion, Hayek relies, inter alia, on *Allstate Ins. Co. v Lyons*, 843 F Supp 2d 358 (EDNY 2012). In that case, several insurers alleged that defendant medical care providers engaged in fraudulent schemes to obtain insurance proceeds which were supposed to have been used to pay for medical services rendered to individuals who had been injured in automobile accidents. The court held, inter alia, that the defendant medical care providers could not compel the insurers to arbitrate claims regarding payments already made to claimants. However, the court compelled arbitration of insurance claims which had not yet been paid by the insurers.

This Court finds that, despite the holding in *Allstate Ins. Co. v Lyons,* there is no basis for compelling arbitration in the captioned action. Significantly, Hayek has failed to annex to its motion any information regarding the claims it seeks to arbitrate. *See* 11 NYCRR 65-4.2(b) (providing that a claimant seeking to arbitrate shall initiate such arbitration by submitting the insurer's denial of claim form regarding a specific claim, along with claimant's reasons for contesting the denial of the said claim). Even assuming that such information had been provided, this Court finds that Hayek's claims should not be arbitrated at this juncture since such arbitration could lead to a determination inconsistent with the result in the captioned action. *See, e.g., GEICO Ins. Co. v Williams,* 2011 N.Y. Slip Op. 30326U (Sup Ct Nassau County 2011) (in an action seeking a declaration that defendants were not entitled to no-fault benefits, court stayed pending no-fault arbitrations until the outcome of the declaratory judgment action "in the interests of judicial economy"and given the possibility that "significantly varying outcomes" if the insurance company was required to "litigat[e] each alleged fraudulent claim separately").

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that defendant's motion is denied; and it is further,

ORDERED that the parties are to appear for a preliminary conference in this matter on June 27, 2017, at 80 Centre Street, New York, New York at 2:30 p.m.; and it is further,

ORDERED that this constitutes the decision and order of this Court.

Dated: April 10, 2017

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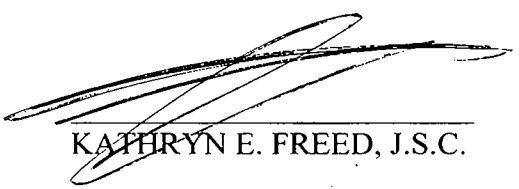

KATHRYN E. FREED, J.S.C.