SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Integon Natl. Ins. Co. v. Zhong Shen Lin

2021 NY Slip Op 01720 (N.Y. Ct. App. 2021) · No. Appeal No. 13405; Case No. 2020-02788; Index No. 156893/18 · Decided March 23, 2021

SUMMARY

The Appellate Division, First Department, affirmed an order granting summary judgment to Integon National Insurance Company and declaring that it had no duty to defend or indemnify in an underlying personal injury action. The court held that the policy was void from inception because it was issued to a deceased person who did not qualify as an insured and whose premises did not constitute covered residence or insured premises; further discovery and a disclaimer were unnecessary.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Webber, J.P.; Oing, J.; Kennedy, J.; Scarpulla, J.
JURISDICTION	New York
DECIDED	March 23, 2021
DOCKET	Appeal No. 13405; Case No. 2020-02788; Index No. 156893/18
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, that denied Mayra Encarnacion's cross motion for summary judgment and granted Integon's motion for summary judgment declaring that it had no duty to defend or indemnify Zhong Shen Lin in the underlying personal injury action.
STANDARD OF REVIEW	De novo review of summary judgment; summary judgment is appropriate where the movant establishes entitlement as a matter of law and no material factual dispute requires further discovery.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Mayra Encarnacion v. Integon National Insurance Company

TOPICS

insurance coverage | duty to defend | duty to indemnify | summary judgment | declaratory relief insurance

PRACTICE AREAS

insurance coverage | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether Integon was entitled to summary judgment declaring that it had no duty to defend or indemnify because the policy was issued to a person who was already deceased.
2. Whether further discovery was warranted before resolving the coverage dispute.
3. Whether a disclaimer was required where coverage was void from the outset.

HOLDINGS

1. Integon established prima facie entitlement to summary judgment because the policy was issued to a deceased person who did not meet the policy definition of an insured and the premises did not qualify as a residence premises or insured location. The policy therefore provided no coverage, and Integon had no duty to defend or indemnify.
2. Further discovery was not warranted because the policy language and submitted affidavit established the absence of coverage as a matter of law.
3. No disclaimer was necessary because coverage was void from the outset rather than excluded under an otherwise operative policy.

KEY QUOTATIONS

> *“coverage was void from the outset and the disclaimer was not necessary”*

FACTUAL BACKGROUND

The insurance policy was issued in reliance on an application naming Qi Shen Zou as the applicant and insured. Zou was deceased when the policy was issued. The policy therefore did not cover a qualifying insured, residence premises, or insured location, and the dispute concerned Integon's obligations to defend and indemnify Zhong Shen Lin in an underlying personal injury action.

PROCEDURAL HISTORY

Integon commenced a declaratory judgment action concerning insurance coverage for an underlying personal injury action. Supreme Court denied Encarnacion's cross motion for summary judgment and granted Integon's motion, declaring that Integon had no duty to defend or indemnify. Encarnacion appealed, and the Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Westchester Fire Ins. Co. v Schorsch, 186 AD3d 132, 140 [1st Dept 2020]
- Tower Ins. Co. of N.Y. v Zaroom, 145 AD3d 556, 557 [1st Dept 2016]
- Tower Ins. Co. of N.Y. v Hossain, 134 AD3d 644, 644 [1st Dept 2015]
- City of New York v Granite State Ins. Co., 136 AD3d 523, 524 [1st Dept 2016], lv dismissed 28 NY3d 955 [2016], lv denied 29 NY3d 915 [2017]

OPINION

PER CURIAM.

Integon Natl. Ins. Co. v Zhong Shen Lin (2021 NY Slip Op 01720) Integon Natl. Ins. Co. v Zhong Shen Lin 2021 NY Slip Op 01720 Decided on March 23, 2021 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: March 23, 2021 Before: Webber, J.P., Oing, Kennedy, Scarpulla, JJ. Index No. 156893/18 Appeal No. 13405 Case No. 2020-02788 [*1]Integon National Insurance Company, Plaintiff-Respondent, vZhong Shen Lin etc., Defendant, Mayra Encarnacion, Defendant-Appellant. Ami Morgenstern, Attorney-at-Law, PLLC, Long Island City (Marc Andrew Williams of counsel), for appellant.

Law Offices of Natasha Z. Millman, New York (Natasha Z. Millman of counsel), for respondent. Order, Supreme Court, New York County (Arlene P. Bluth, J.), entered June 18, 2020, which, inter alia, denied defendant Mayra Encarnacion's cross motion for summary judgment and granted plaintiff's motion for summary judgment declaring that it has no duty to defend or indemnify Zhong Shen Lin, as administrator and/or executor of the estate of Qi Shen Zou (a/k/a Qi Sheng Zou) in the underlying personal injury action, unanimously affirmed, without costs.

The plain language of the policy (see Westchester Fire Ins. Co. v Schorsch, 186 AD3d 132, 140 [1st Dept 2020]) and the affidavit submitted by the decedent named applicant/named insured's daughter-in-law (see Tower Ins. Co. of N.Y. v Zaroom, 145 AD3d 556, 557 [1st Dept 2016]; Tower Ins. Co. of N.Y. v Hossain, 134 AD3d 644, 644 [1st Dept 2015]) established prima facie entitlement to summary judgment because the decedent was not alive when the policy was issued, and further discovery was not warranted.

Since, in reliance on the application, the policy was issued to a deceased person, who did not meet the definition of an insured or that the subject premises constituted a "residence premises" or an "insured location," coverage was void from the outset and the disclaimer was not necessary (see City of New York v Granite State Ins. Co., 136 AD3d 523, 524 [1st Dept 2016], lv dismissed 28 NY3d 955 [2016], lv denied 29 NY3d 915 [2017]).THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 23, 2021