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

Northern States Power Company v. Maria T. Vullo

2017 NY Slip Op 07176 (App. Div. 2017) · No. 41294/86 · Decided October 12, 2017

SUMMARY

The Appellate Division, First Department affirmed an order confirming a referee's report disallowing Northern States Power Company from asserting certain excess insurance claims in the liquidation proceeding for Midland Insurance Company. The court held that the claims were barred by res judicata and collateral estoppel because the same claims and issues had previously been litigated in Minnesota.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Peter Tom, J.P.; David Friedman Renwick; Richard T. Andrias; Singh; Moulton
JURISDICTION	New York
DECIDED	October 12, 2017
DOCKET	41294/86
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed from an order of Supreme Court, New York County, confirming a Referee's report that disallowed certain excess insurance claims in the Midland Insurance Company liquidation proceeding.
PRECEDENTIAL VALUE	published
PARTIES	Northern States Power Company, Claimant-Appellant v. Maria T. Vullo, Superintendent of Financial Services of the State of New York as Liquidator of Midland Insurance Company, Respondent-Respondent

TOPICS

insurance coverage · res judicata · civil procedure · appellate procedure

PRACTICE AREAS

insurance · commercial litigation · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether Northern States Power Company's excess insurance claims in the Midland Insurance Company liquidation proceeding were barred by res judicata and collateral estoppel based on prior Minnesota litigation.
2. Whether Supreme Court properly confirmed the Referee's report disallowing those claims.

HOLDINGS

1. The subject excess insurance claims were barred by res judicata and collateral estoppel because the same claims and issues had already been fully litigated in Minnesota.

KEY QUOTATIONS

> *"Supreme Court and the Referee properly found that the subject claims are barred by res judicata and collateral estoppel, based on prior rulings in Minnesota on the same claims and issues"*

FACTUAL BACKGROUND

Northern States Power Company asserted certain excess insurance claims in the New York liquidation proceeding for Midland Insurance Company. The same claims and issues had previously been fully litigated in Minnesota. The Referee and Supreme Court therefore determined that the claims were barred by res judicata and collateral estoppel.

PROCEDURAL HISTORY

A Referee recommended disallowing Northern States Power Company's excess insurance claims because the same claims and issues had already been fully litigated in Minnesota. Supreme Court, New York County, confirmed the Referee's report, and the Appellate Division, First Department, unanimously affirmed with costs.

DISPOSITION

affirmed

CASES CITED

- Spectris Inc. v. 1997 Milton B. Hollander Family Trust, 138 AD3d 626 (1st Dept 2016)
- Bruno v. Bruno, 83 AD3d 165 (1st Dept 2011), lv denied 18 NY3d 805 (2012)
- Hauschildt v. Beckingham, 686 NW2d 829, 840 (Minn. 2004)

OPINION

PER CURIAM.

Matter of Liquidation of Midland Ins. Co. (2017 NY Slip Op 07176) Matter of Liquidation of Midland Ins. Co. 2017 NY Slip Op 07176 Decided on October 12, 2017 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 on October 12, 2017 Tom, J.P., Renwick, Andrias, Singh, Moulton, JJ. 41294/86 [*1] In re Liquidation of Midland Ins. Co. Northern States Power Company, etc., Claimant-Appellant, v Maria T. Vullo, Superintendent of Financial Services of the State of New York as Liquidator of Midland Insurance Company, Respondent-Respondent. Michael Best & Friedrich LLP, Milwaukee, WI (Raymond R. Krueger of the bar of the State of Wisconsin, admitted pro hac vice, of counsel), and Cowan, Liebowitz & Latman, P.C., New York (Joelle A. Milov of counsel), for appellant.

Eliot J. Kirshnitz, New York, and Brown Werner LLP, Philadelphia, PA (James E. Brown of the bar of the Commonwealth of Pennsylvania, admitted pro hac vice, of counsel), for respondent. Order, Supreme Court, New York County (Michael D. Stallman, J.), entered July 13, 2016, which confirmed the report of a Referee, dated December 10, 2015, disallowing claimant from asserting certain excess insurance claims in the New York liquidation proceeding for Midland Insurance Company because the issues have already been fully litigated in a previous action in Minnesota, unanimously affirmed, with costs.

Supreme Court and the Referee properly found that the subject claims are barred by res judicata and collateral estoppel, based on prior rulings in Minnesota on the same claims and issues (see Spectris Inc. v 1997 Milton B. Hollander Family Trust, 138 AD3d 626 [1st Dept 2016]; Bruno v Bruno, 83 AD3d 165 [1st Dept 2011], lv denied 18 NY3d 805 [2012]; Hauschildt v Beckingham, 686 NW2d 829, 840 [Minn 2004]).

We have considered claimant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: OCTOBER 12, 2017 CLERK

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