

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

P.J. FITZPATRICK, INC.,)
In its own right and alternatively as)
a subrogee of LANCE STOWELL,)
)
Plaintiff,)
)
v.)
)
LANCE STOWELL)
and)
NATIONWIDE MUTUAL)
INSURANCE COMPANY,)
)
Defendants.)

C.A. No. N16C-12-234 ALR

Date Submitted: September 27, 2017

Date Decided: October 16, 2017

Upon Defendant’s Motion to Dismiss
DENIED

This matter is before the Court on Defendant Nationwide Mutual Insurance Company’s motion to dismiss, which is opposed by Plaintiff.¹ Upon consideration of the facts, arguments, and legal authority set forth by the parties; statutory and decisional law; and the entire record in this case, the Court hereby finds as follows:

1. Lance Stowell (“Stowell”) was operating a motor vehicle in the course of his employment with P.J. Fitzpatrick, Inc. (“P.J. Fitzpatrick”) when he was rear-ended by Seymour Kurland (“Kurland”).

¹ Defendant Lance Stowell has notified the Court that he does not oppose Nationwide’s motion to dismiss.

2. Stowell received workers' compensation benefits in the amount of \$8,213.52.

3. Kurland was insured by Nationwide Mutual Insurance Company ("Nationwide").

4. Stowell sued Kurland in Pennsylvania, and that lawsuit was resolved for a lump sum payment of \$72,000. As part of the resolution of the Pennsylvania action, Stowell executed a release of claims in favor of Kurland and Nationwide ("Release"), which expressly states that Stowell will be responsible for any workers' compensation lien.

5. P.J. Fitzpatrick was not a party to the Pennsylvania lawsuit and is not a signatory on the Release.

6. P.J. Fitzpatrick, in its own right and alternatively as a subrogee of Stowell, filed this workers' compensation subrogation lawsuit against Stowell, Nationwide, and Kurland seeking reimbursement for the amount of workers' compensation benefits paid to or on behalf of Stowell.²

7. The parties have stipulated to the dismissal of Kurland from this action.

8. Nationwide has moved to dismiss pursuant to Superior Court Rule of Civil Procedure 12(b)(2) ("Rule 12(b)(2)") for lack of personal jurisdiction.

² 19 *Del. C.* § 2363 (providing the employer with the right to receive reimbursement from the tortfeasor for money paid to the to the recipient of workers' compensation benefits).

Nationwide contends that the Release signed by Stowell obligates Stowell to pay any outstanding liens and thereby insulates Nationwide from liability to P.J. Fitzpatrick for the workers' compensation lien.

9. On a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), “the plaintiff ‘bear[s] the burden to articulate a non-frivolous basis for this court’s assertion of jurisdiction.’”³ The plaintiff “must plead specific facts and cannot rely on mere conclusory assertions.”⁴ However, the factual record is read in the light most favorable to the plaintiff and the Court must draw all reasonable inferences in favor of the plaintiff.⁵ The plaintiff need only make a prima facie showing that the exercise of personal jurisdiction is appropriate,⁶ which requires a showing that “there is a statutory basis for serving the defendant” and that the “exercise of personal jurisdiction over the defendant is consistent with the Due Process Clause.”⁷ To be consistent with the Due Process Clause, the Court must

³ *Ciabattoni v. Teamsters Local 326*, 2017 WL 1175665, at *3 (Del. Super. Mar. 28, 2017) (citing *IM2 Merck & Mfg., Inc. v. Tirex Corp.*, 2000 WL 1664168, at *4 (Del. Ch. Nov. 2, 2000)).

⁴ *Id.* (citing *Mobile Diagnostic Grp. Holdings, LLC v. Suer*, 972 A.2d 799, 802 (Del. Ch. 2009)).

⁵ *See id.*; *Wiggins v. Physiologic Assessment Services, LLC*, 138 A.3d 1160, 1165 (Del. Super. June 3, 2016).

⁶ *See Wiggins*, 138 A.3d at 1164-65; *Ciabattoni*, 2017 WL 1175665, at *3.

⁷ *Turf Nation, Inc., v. UBU Sports, Inc., n/k/a/ Artificial Turf Sports Field, Inc., & Joseph Michael Vrankin*, 2017 WL 4535970, at *5 (Del. Super. Oct. 11, 2017) (citing *Sample v. Morgan*, 925 A.2d 1046, 1056 (Del. Ch. 2007)); *See also Wiggins*, 138 A.3d at 1164-65.

consider whether the party has “minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁸

10. P.J. Fitzpatrick met its burden to make a prima facie showing that this Court’s exercise of personal jurisdiction over Nationwide is appropriate. In its complaint, P.J. Fitzpatrick alleged that Nationwide is authorized to issue insurance policies and do business in Delaware, and that Nationwide can be served process in Delaware via the Delaware Insurance Commissioner. This allegation is sufficient to show that there is a statutory basis for jurisdiction over and service upon Nationwide in Delaware and, pursuant to 18 *Del. C.* § 525, Nationwide was served via the Delaware Insurance Commissioner on July 24, 2017. In addition, P.J. Fitzpatrick’s allegations are sufficient to show that Nationwide has minimum contacts with the State of Delaware such that it is not unfair or unjust for Nationwide to be sued in Delaware.⁹

11. Nationwide appears to argue that this Court lacks jurisdiction over it because the terms of the Release signed by Stowell obligate Stowell, and not

⁸ *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945).

⁹ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (holding that the necessary minimum contacts are those where “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there”).

Nationwide, to pay for any outstanding liens. However, the issue of whether Nationwide or Stowell is legally obligated to pay under the terms of the Release is irrelevant to whether this Court may exercise jurisdiction over Nationwide.

12. In addition, while there may be a claim by Nationwide against Stowell for payment of any amount due to P.J. Fitzpatrick (and the Court does not reach that question here), that is not dispositive of the claim by P.J. Fitzpatrick against Nationwide.¹⁰ Accordingly, the complaint states a claim upon which relief may be granted pursuant to Superior Court Rule of Civil Procedure 12(b)(6).

13. P.J. Fitzpatrick has a statutory right to reimbursement for workers' compensation benefits paid to Stowell that includes the right to bring a direct action against a third party's liability insurer.¹¹ Therefore, P.J. Fitzpatrick is entitled to bring suit against Nationwide for reimbursement of the workers' compensation benefits paid. P.J. Fitzpatrick's right to bring suit against Nationwide for reimbursement is not affected by the Release in the Pennsylvania action, because P.J. Fitzpatrick was not a party to that action or a signatory to that Release. Therefore, Nationwide is not entitled to dismissal of the action by P.J. Fitzpatrick for subrogation.

¹⁰ Although the Court agrees with Plaintiff's position that Nationwide's motion must be denied, the Court does not rely upon the December 3, 2015 DDOJ Bulletin No. 82 which, on its face, references PIP coverage and not workers' compensation.

¹¹ 19 *Del. C.* § 2363.

14. The Court finds that P.J. Fitzpatrick has met its burden of showing that this Court's exercise of personal jurisdiction over Nationwide is appropriate and that Nationwide's arguments regarding the Release do not affect jurisdiction or P.J. Fitzpatrick's right to sue Nationwide. Therefore, the Court denies Nationwide's motion to dismiss.

NOW, THEREFORE, this 16th day of October, 2017, Defendant Nationwide Mutual Insurance Company's Motion to Dismiss is hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli