St. John's Law Review

Volume 38, May 1964, Number 2 Article 48

Clause in Endorsement Reducing Award Held to Violate Policy Behind MVAIC

St. John's Law Review

equitable counterclaim. Under Section 1425 of the CPA counterclaims were not permitted in holdover proceedings, although they were allowed in non-payment of rent cases.

The court found that the restrictive language of Section 1425 of the CPA was not incorporated in Section 743 of the RPAPL, and held that counterclaims may be interposed in any summary proceeding whether the proceeding be for non-payment or for holding over.

Although the desire for quick disposition of landlord and tenant matters restricts the utilization of counterclaims, the court noted that "where it is so intertwined with the defense as to become part and parcel thereof,"[267] the counterclaim should be entertained in the same proceeding. However, where the counterclaim does not bear upon the question of whether the landlord is entitled to immediate possession of his property, the counterclaim should be severed and sent off as a separate action or proceeding. Thus, a counterclaim for negligence resulting in personal injuries interposed by the tenant in a summary proceeding should be severed from the proceeding.

MVAIC

Clause in Endorsement Reducing Award Held to Violate Policy Behind MVAIC

The Motor Vehicle Accident Indemnification Corporation [hereinafter refered to as MVAIC] was created to provide compensation for innocent persons injured by an uninsured motorist.[268] The courts have sought to uphold this broad purpose in a number of recent decisions.

In *Durrant v. MVAIC*,[269] petitioner was involved in an accident with an uninsured automobile. He was covered by the New York Automobile Accident Indemnification endorsement contained in his employer's policy and hence was an "insured" person under the MVAIC law.[270] The endorsement contained the standard clause reducing MVAIC's liability by such workmen's compensation as may have been received by the insured for the same injuries. Petitioner filed his claim with MVAIC. The arbitrator refused to reduce the award by the amount of workmen's compensation received by the petitioner, finding that the Legislature did not intend that MVAIC should have the power through its right to draw the

---

[267] *Id.* at 812.

[268] N.Y. INS. LAW § 600(2); McCarthy v. MVAIC, 16 App. Div. 2d 35, 38, 224 N.Y.S.2d 909, 912, *aff'd*, 12 N.Y.2d 922, 188 N.E.2d 405, 238 N.Y.S. 2d 101 (1963).

[269] 20 App. Div. 2d 242, 246 N.Y.S.2d 548 (2d Dep't 1964).

[270] N.Y. INS. LAW § 601(i).

endorsement[271] to reduce the amount of the award. Petitioner sought to confirm the award. The appellate division, in reversing the lower court and confirming the arbitrator's award, held that the Legislature in enacting the MVAIC law intended that all innocent victims of uninsured motorists should receive uniform recoveries and since the MVAIC statute does not reduce the recovery of "qualified" persons,[272] the recoveries of "insured" persons cannot be so reduced. Moreover, the endorsement is not a private contract between MVAIC and the insured; a supervening public interest is involved which nullifies a unilateral provision inserted by MVAIC limiting the insured's recovery.[273] The case will have wide implications in view of the fact that the disputed MVAIC clause involved at bar is virtually identical to the one found in almost all uninsured motorist endorsements.

Passenger's Right to Collect Under MVAIC Endorsement Not Affected by Insured's Failure to Notify Insurer

In *Garcia v. MVAIC*,[274] the claimant sustained personal injuries when an automobile in which he was a passenger struck a wall. At the time of the accident, the vehicle was insured by the All State Insurance Company, whose policy contained the New York Automobile Accident Indemnification endorsement. Subsequently, the company disclaimed liability because of the failure of the owner to notify it of the accident within the allotted time. Thereafter, the passenger filed a notice of claim with MVAIC as an "insured person"[275] (the victim of an accident in an uninsured vehicle) under the MVAIC endorsement. The MVAIC then applied for a permanent stay of arbitration, contending that claimant did not have the status of an "insured person" because the disclaimer by the insurance company rendered the vehicle uninsured, thereby rendering the policy and the endorsement contained

---

[271] N.Y. INS. LAW §§ 167(2a), 606(b); see Matthews v. American Cent. Ins. Co., 154 N.Y. 449, 456, 48 N.E. 751, 752 (1897).

[272] N.Y. INS. LAW §§ 601(b), 610.

[273] MVAIC also contended that the claimant would get a double recovery if he were permitted both the workmen's compensation and full MVAIC awards. The court said that there cannot be a double recovery, because the claimant's recovery is "subject to the lien of his employer for reimbursement of the sum of the workmen's compensation benefits received." That is, the employer, and thereby his workmen's compensation carrier, are in effect to be given the right of subrogation against MVAIC. The workmen's compensation carrier is entitled to be reimbursed from the MVAIC proceeds and not vice versa. *But see* Commissioners of State Insurance Fund v. Miller, 4 App. Div. 2d 481, 166 N.Y.S.2d 777 (1st Dep't 1957) (wherein it was held that the employer's workmen's compensation carrier had no lien on insurance proceeds received by the employee).

[274] 41 Misc. 2d 858, 246 N.Y.S.2d 841 (Sup. Ct. 1964).

[275] N.Y. INS. LAW § 601(i).