
In the Matter of the Rehabilitation of
FRONTIER INSURANCE COMPANY

DECISION
AND
ORDER

Application of

CALLON PETROLEUM COMPANY,

Petitioner.

Index No. 97-06
(RJI No. 01-06-084713)

(Judge Richard M. Platkin, Presiding)

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Hon. Richard M. Platkin, A.J.S.C.

This is a special proceeding brought under Article 74 of the Insurance Law. Petitioner has denominated this a “petition for enforcement of judgment” and invokes “the Court’s equitable powers . . . under any procedural mechanism through which the relief requested may be granted, including without limitation, Section 5225(b) of the CPLR” (Petition at p 1, n 1). In essence,

petitioner seeks an order directing the Superintendent of Insurance (“the Superintendent”), in his capacity as Rehabilitator of Frontier Insurance Company (“Frontier”), to pay a surety claim in favor of petitioner in the amount of two million seven hundred thousand dollars (\$2,700,000.00), with accrued interest of approximately five hundred thousand dollars (\$500,000.00).

In 2001, petitioner sued Frontier on its surety bond in the United States District Court for the Eastern District of Louisiana. Petitioner moved for summary judgment in the matter. Frontier filed no papers in opposition to the motion. On the last day upon which responsive papers could have been served, August 27, 2001, Supreme Court, New York County (Lehner, J.), issued an Order to Show Cause upon the application of the Superintendent. That order commenced a delinquency proceeding against Frontier, appointed the Superintendent as temporary Rehabilitator of Frontier pursuant to Article 74 of the Insurance Law and stayed any further business action on the part of Frontier, except as may be authorized by the Superintendent.

With Frontier having defaulted on the summary judgment motion, the Federal District Court granted petitioner a judgment for \$2.7 million dollars. More than a year later, the Superintendent as Rehabilitator moved to vacate that judgment under Federal Rule of Civil Procedure 60(b). The motion was denied. A subsequent motion for reconsideration was also denied. The denial of the motion was affirmed on appeal (*Callon Petroleum Co. v Frontier Ins.Co.*, 351 F3d 204 [5th Cir 2003]).

Petitioner moved in Supreme Court, New York County for an order fixing the amount of its claim in accordance with the federal judgment. Supreme Court (Lehner, J.) denied this motion, holding that the federal judgment was not entitled to full faith and credit (*In the Matter of the Rehabilitation of Frontier Ins. Co.*, 6 Misc 3d 291 [2004]). That determination was reversed on

appeal (27 AD3d 274 [1st Dept 2006], *lv denied* 7 NY3d 713 [2006]). The value of petitioner’s claim has thus been finally determined and is no longer subject to debate.

By this proceeding petitioner seeks to have the Superintendent (as Rehabilitator) directed to pay the claim from Frontier’s assets. For two distinct reasons, petitioner is not entitled to this relief. First, Insurance Law § 7414 states, in pertinent part:

During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets.

The current rehabilitation is clearly a “delinquency proceeding” under Insurance Law § 7408. That statute defines a delinquency proceeding as “any proceeding commenced against an insurer for the purpose of liquidating, *rehabilitating*, reorganizing, or conserving such insurer” (Ins Law § 7408[2] [emphasis added]). Regardless of how petitioner seeks to denominate this proceeding, it is fundamentally a “proceeding in the nature of an . . . execution” (*see Ace Grain Co. v Rhode Island Ins. Co.*, 107 F Supp 80 [SDNY1952], *affd on op’n below*, 199 F2d 758 [2d Cir 1952]).¹ As such, prosecution is proscribed by the statute.

Indeed, to allow petitioner the relief it seeks would frustrate the very purpose of the rehabilitation. Article 74 of the Insurance Law establishes a carefully crafted statutory framework within which an insolvent or otherwise financially at-risk insurer can be protected against a haphazard “feeding frenzy” of creditors, while the rights of legitimate claimants are guarded in an even-handed fashion. “The advantage which the judgment creditor now seeks to secure is

¹ While *Ace Grain* was decided under the predecessor to the current Insurance Law, the relevant provisions of the two statutes are identical.

the very thing the statute is intended to prevent” (*Ace Grain, supra*, at 83).

Moreover, petitioner is also barred from relief by its having failed to follow the court-ordered interim procedure for judicial review of the Rehabilitator’s adjudication of surety claims. By Order dated May 10, 2004 this Court (Clemente, J.), approved a procedure designed “to dispose of surety claims . . . on an ongoing basis, while offering due process to all claimants . . .” (Order at p 2, para 2). Had petitioner complied with the terms of this order, it would have been accorded an opportunity to have its claim resolved by the Superintendent as Rehabilitator; in the absence of a satisfactory administrative resolution, petitioner would have been entitled, under the express terms of the order, to prompt judicial review in a summary proceeding.²

Finally, petitioner contends that its rights are being abridged because a considerable number of claims brought against Frontier have been and continue to be paid while petitioner’s judgment remains unsatisfied. Petitioner claims that this bespeaks the Rehabilitator’s having granted an inappropriate preference to some claims over others. This argument is flawed, however. Petitioner fails to point out that those claims that are being resolved are being handled through the very court-ordered procedures that petitioner would rather bypass than follow. It should hardly be surprising, therefore, that the Superintendent has not found it appropriate to settle a multi-million-dollar claim outside the framework of the procedures mandated by both the Insurance Law and court order.

Accordingly, it is

ORDERED that the instant petition is dismissed.

² Of course, the bulk of the procedures detailed in the order of Justice Clemente deal with the process of determining the values of particular claims. In the instant case, since the issue of value had already been determined with finality, the procedures that would have been followed in accordance with the order would have been streamlined considerably.

This constitutes the Decision and Order of the Court. All papers including this Decision and Order are returned to plaintiffs' counsel. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

Dated: Albany, New York
March 7, 2007

RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

Notice of Motion dated November 13, 2006;
Petition dated November 10, 2006 with attached Affirmation of Greg Hansen,
Esq. dated November 10, 2006 and Exhibits A-C;
Affirmation of William F. Costigan, Esq. dated December 11, 2006 with attached
Exhibits A-G.