

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31080
Y/kmb

_____AD3d_____

Argued - April 7, 2011

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-09491

DECISION & ORDER

In the Matter of Fiduciary Insurance Company
of America, appellant, v Antoine Morris, et al.,
respondents; GEICO, et al., proposed additional
respondents.

(Index No. 26257/09)

Skenderis & Cornacchia, P.C., Long Island City, N.Y. (Louis T. Cornacchia III and
Jennifer L. Cook of counsel), for appellant.

In a proceeding pursuant to CPLR article 75 to stay arbitration of an uninsured motorist claim, the petitioner appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Kings County (Kurtz, Ct. Atty. Ref.), dated June 9, 2010, as, after a hearing, determined that the subject vehicle was stolen and being operated without permission at the time of the accident, denied the petition, and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed insofar as appealed from, without costs or disbursements.

“The strong presumption of permissive use afforded by Vehicle and Traffic Law § 388 can only be rebutted by substantial evidence sufficient to show that the driver of the vehicle was not operating the vehicle with the owner’s consent” (*Matter of State Farm Mut. Auto. Ins. Co. v Ellington*, 27 AD3d 567, 568; *see Matter of State Farm Fire & Cas. Co. v Hayes*, 78 AD3d 1063). Here, the Supreme Court properly determined that the presumption of permissive use was overcome (*see Matter of State Farm Fire & Cas. Co. v Hayes*, 78 AD3d at 1063; *Matter of New York Cent.*

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Mut. Fire Ins. Co. v Accardo, 298 AD2d 459, 459). In this respect, the fact-finder's resolution of issues of the witnesses' credibility is supported by the record and will not be disturbed on appeal (*see Matter of State Farm Fire & Cas. Co. v Hayes*, 78 AD3d at 1063).

SKELOS, J.P., LEVENTHAL, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court