

Matter of Alea N. Am. Ins. Co. v Matos
2009 NY Slip Op 30223(U)
January 28, 2009
Supreme Court, New York County
Docket Number: 113564/08
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Joan B. Lobis

PART 6

Index Number : 113564/2008
ALEA NORTH AMERICA INS.
VS.
MATOS, RAKEL A.
SEQUENCE NUMBER : 001
COMPEL OR STAY ARBITRATION

INDEX NO. 113564/08
MOTION DATE 11/3/08
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

this motion to ~~res~~ stay arbitration

PAPERS NUMBERED

1-7
8-12

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition

decided in accordance with
accompanying decision, order,
and judgment.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1475).

Dated: 1/28/09

JBL
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
In the Matter of the Application of ALEA NORTH
AMERICA INSURANCE COMPANY,

Petitioner,

-against-

Index No. 113564/08

RAKEL A. MATOS and TAISHA MUNOZ,

Decision, Order, and Judgment

Respondent,

ALLSTATE INSURANCE COMPANY, CALLED
TERREL STEED, STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY and
JIBI K. THOMAS,

Proposed Additional Respondents.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1412).

-----X
JOAN B. LOBIS, J.S.C.:

Petitioner, Alea North America Insurance Company ("Alea Insurance"), brings this petition seeking an order, pursuant to C.P.L.R. § 7503(c): (1) granting a permanent stay of the arbitration between petitioner and respondents due to respondents' failure to comply with conditions precedent pursuant to the applicable policy of insurance, and (2) granting a permanent stay of arbitration because the alleged tortfeasors had valid insurance coverage on the date of the occurrence. Alternatively, petitioners seek a temporary stay of the arbitration, pending a hearing, to determine whether the offending vehicles were in fact uninsured on the date of loss and ask the Court to add the proposed additional respondents listed in the caption as respondents. In response, respondents oppose the request for a permanent stay of arbitration. Although they oppose any stay, respondents argue in the alternative that if this court is inclined to stay the proceeding at all, there should be a temporary stay pending a framed issue hearing as to the question of whether or not there is insurance coverage, and the additional respondents should be joined for such a hearing.

This proceeding arises from a motor vehicle accident which occurred on January 31, 2007. According to the petition, a motor vehicle registered to and operated by respondent Raket A. Matos was involved in an accident with a motor vehicle with South Carolina license plates registered to and operated by Calvin Terrel Steed and another motor vehicle registered to and operated by Jibi K. Thomas. The accident occurred at the corner of East 141st Street and Cypress Avenue in the Bronx. Taisha Munoz was a passenger in the vehicle operated by respondent Matos.

On or about September 22, 2008, GAB Robins N.A. ("GAB Robins") received a demand for arbitration from respondents Matos and Munoz. The demand for arbitration sets forth that GAB Robins is the insurer for the vehicle that was driven by respondent Matos. But, according to petitioner, the proper entity to have been served with the demand for arbitration is not GAB Robins, but petitioner, Alea Insurance. Alea Insurance contends that respondent is not entitled to proceed to an uninsured motorist arbitration based on the fact that respondent failed to comply with the conditions precedent to coverage. Specifically, since GAB Robins was served with the demand for arbitration rather than Alea Insurance, Alea Insurance contends that the demand for arbitration is void, due to defective service. Second, Alea Insurance contends that because the vehicles identified as having been registered to and operated by proposed additional respondents Steed and Thomas each carried valid insurance on the date of loss, the collision did not involve an uninsured motor vehicle.

GAB Robins is the third-party administrator for Alea Insurance. GAB Robins points out that the police report identifies the insurer of the vehicle that respondent was operating with the insurance code "196", which corresponds to Alea Insurance on the New York State Insurance

Department's "DMV Insurance Codes and Company Contacts" list (the "DMV Insurance Codes List"). Petitioner argues that a stay should be granted because the notice of intention to arbitrate was served improperly, under C.P.L.R. § 7503(c), since Alea Insurance was not served. This court rejects such a rigid reading of the statute. Service was made on GAB Robins on September 17. It is clear that Alea Insurance received actual notice of the demand in a timely manner, in that this proceeding was brought within twenty (20) days of service of the demand. Initial Trends, Inc. v. Campus Outfitters, Inc., 58 N.Y.2d 896 (1983), aff'g, 90 A.D.2d 716 (1st Dep't 1982). The request for a permanent stay on this ground is denied.

As a second ground for staying the arbitration, petitioner asserts that the offending vehicles were in fact insured at the time of the occurrence. Petitioner notes that insurance code "328" is listed for the vehicle that was owned and operated by Thomas. According to the DMV Insurance Codes List, code number 328 corresponds to State Farm Mutual Automobile Insurance Company. Since the vehicle driven by Steed was registered in South Carolina and not in New York, the police report does not have a corresponding insurance code number; there is, however, a description of the insurance information that was obtained by the police officer from the insurance identification card. The police report recites that the vehicle is insured by policy number 935731761, and that the policy expires on August 14, 2007. Petitioner points out that this shows that the policy was in effect on January 31, 2007, the date of the accident. Petitioner conducted an insurance activity search and found that Allstate Insurance Company, a proposed additional respondent, is the insurer of Steed's vehicle.

Petitioner contends that there is an issue of fact as to whether the two vehicles were in fact insured on the date of the occurrence. Therefore, petitioner seeks a stay of the arbitration and asks that the proposed additional respondents be added to this proceeding, and a hearing be held to determine the effectiveness of any purported disclaimer and/or cancellations of the automobile liability insurance contracts.

Petitioner has the burden of showing “the existence of sufficient evidentiary facts to establish a genuine preliminary issue” as to whether or not the vehicle was insured. Empire Mut. Ins. Co. v. Zelin, 120 A.D.2d 365, 366 (1st Dep’t 1986) (citation omitted). Where the “insurance company presents some evidence that the offending vehicle is insured,” arbitration should be stayed and at least an evidentiary hearing ordered. Actna Ins. Co. v. Logue, 68 Misc. 2d 841, 846 (Sup. Ct. N.Y. Co. 1972). In this case, petitioner has presented evidence that raises a genuine issue as to whether the vehicles owned and operated by Thomas and Steed were insured on the date of the accident, January 31, 2007. Although respondents object to a permanent stay, they concede that under these facts, it would not be inappropriate to grant a temporary stay and to hold a framed issue hearing.

Accordingly, it is

ORDERED that the application to stay arbitration is granted to the extent that a hearing is directed on the preliminary issue of whether the Steed and Thomas vehicles had insurance coverage at the time of the accident and the arbitration is stayed temporarily pending such trial; and it is further

ORDERED that the Trial Support Clerk is directed to assign this matter to an appropriate part for the hearing upon receipt of a copy of this order with notice of entry, the filing of note of issue and a statement of readiness, and the payment of appropriate fees, if any; and it is further

ORDERED that Calvin Terrel Steed and Jibi K. Thomas shall be added as party respondents, together with the insurance companies that are alleged to have insured their vehicles, Allstate Insurance Company and State Farm Mutual Automobile Insurance Company, respectively, upon service upon said party respondents of a copy of this order with notice of entry, together with a supplemental notice of petition and supplemental petition pursuant to C.P.L.R. § 1003, and copies of all papers previously served in the proceeding, and it is further

ORDERED that the caption of this proceeding is amended to reflect the inclusion of additional party respondents Calvin Terrel Steed, Jibi K. Thomas, Allstate Insurance Company and State Farm Mutual Automobile Insurance Company, and the Clerk of this Court and the Trial Support Clerk, upon service on them of a copy of this order with notice of entry, shall mark their records to reflect the amendment.

Since there is a temporary stay of arbitration, this court does not reach the issue of whether petitioner is entitled to discovery. Petitioner is directed to serve a copy of this order with notice of entry and serve and file all other documents as set forth above. This constitutes the decision, order, and judgment of the court.

Dated: January 20, 2009

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be entered on behalf of the person. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 147B).
BA
JOAN V. LOBIS, J.S.C.