

Benjamin v Sturgess

2009 NY Slip Op 32168(U)

September 24, 2009

Supreme Court, New York County

Docket Number: 08-924

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
PEGGY BENJAMIN and
BLAIR BENJAMIN,

COUNTY OF GREENE

Plaintiffs,

DECISION and ORDER
INDEX NO. 08-924
RJI NO. 19-08-3943

-against-

TRACEY STURGESS and
VISA RENT A CAR, INC.,

Defendants.

In the Matter of the Arbitration of:
TRAVELERS INDEMNITY COMPANY

Petitioner

-against-

For an Order Staying the Underinsured Motorist
Arbitration Demanded by PEGGY BENJAMIN

Respondent.

-and-

TRACEY L. STURGESS, VISA RENT A CAR, INC.,
REX RENT A CAR, VISA RENT A CAR, INC.
d/b/a Rex Rent A Car and REX RENT A CAR d/b/a
Visa Rent A Car, Inc.

Proposed Additional Respondents.

Supreme Court Greene County All Purpose Term, September 15, 2009
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Plaintiffs commenced this action seeking damages for the injuries defendant Tracy Sturgess caused, while driving a vehicle she had rented from defendant Visa Rent A Car, Inc. (hereinafter "Visa"), in their two car motor vehicle accident. This Court granted Plaintiffs a default judgment against both Defendants, and Plaintiffs subsequently demonstrated the amount of their damages at an inquest. Plaintiffs thereafter entered a money judgment against Defendants.

Prior to entry of Plaintiffs' Judgment against Defendants, Plaintiffs served upon Travelers Indemnity Company (hereinafter "Travelers") a Demand for Arbitration based upon Defendants' uninsured status. Plaintiffs claim that their insurance policy with Travelers covers the damages herein because it included uninsured motorist coverage and the Defendants were not insured. Travelers petitioned this Court to stay arbitration, which was granted on January 22, 2009 and extended on June 15, 2009. Plaintiffs now move to lift the stay of arbitration, thereby allowing this matter to proceed to arbitration. Because Travelers failed to demonstrate its entitlement to a

continuation of the stay of arbitration, Plaintiffs' motion is granted.

Contrary to Travelers' contention, "[a]s the party seeking to permanently stay arbitration pursuant to the uninsured/underinsured motorist endorsement of its insured's policy, [Travelers] bore the burden of coming forward with evidence establishing that the alleged offending vehicle was insured by another insurance carrier at the time of the accident." (Allstate Ins. Co. v. Esposito, 15 AD3d 648, 649 [2d Dept. 2005], Matter of Nationwide Mut. Ins. Co. (Hodge), 203 AD2d 805 [3d Dept. 1994]).

Here, Travelers failed to offer any proof, by an individual with actual knowledge, that the Defendants were insured. Travelers submits only its attorney's affidavit, which merely characterizes Plaintiffs' proof that Defendants were uninsured as lacking. However, Travelers fails to affirmatively demonstrate that Defendants were insured. As such, Travelers proof is simply insufficient.

Additionally, on this record, Plaintiffs have made a prima facie showing that neither Defendant is insured. Plaintiffs introduced the rental agreement between defendants Sturges and Visa, which Sturges initialed to decline additional insurance offered by Visa. The agreement notes that California was the originating state, and that Sturges was only authorized to operate the vehicle in California for a specified period of time. However, Sturges struck Plaintiffs' vehicle while driving in New York, well after the expiration of her authorization to drive the vehicle. The agreement also notes that Sturges was insured by AIG, but correspondence from AIG to Travelers' counsel notes that there is no existing "AIG Claim file." Plaintiffs also offer the letter of an investigating firm working for Travelers, which states that they are unable to locate defendant Sturges. The foregoing amply demonstrates that Defendants were uninsured

for purposes of lifting this stay of arbitration.


Lastly, Travelers' claimed need for a continuance of the stay, because they need more time to pursue "[a]dditional avenues of investigation", is unavailing. Travelers provides no detail about their proposed continuing investigations and their claimed need is unsupported by any proof, is conclusory and speculative. They fail to provide any detail about how much "additional time" they will need. Nor do they provide any detail about their diligence in pursuing this investigation over the past eight months, while the stay has been in effect. As such, Travelers has failed to demonstrate its entitlement to a further continuation of the stay.

Accordingly Plaintiffs' motion is granted and the stay of arbitration is lifted.

This Decision and Order is being returned to the attorneys for the Plaintiffs. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Greene County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
September 24, 2009


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated August 7, 2009; Affirmation of Howard Shafran, dated August 7, 2009 with attached exhibits A-P;
2. Affidavit of Laurie Lewis, dated September 8, 2009 with attached exhibits A-B;
3. Affirmation of Howard Shafran, dated September 9, 2009.