

**ELRAC Inc. v Singleton**

2010 NY Slip Op 30077(U)

January 13, 2010

Supreme Court, New York County

Docket Number: 112156/2009

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 112156/2009  
**ELRAC INC**  
 vs.  
**SINGLETON, FARRAH**  
 SEQUENCE NUMBER : 001  
 COMPEL OR STAY ARBITRATION

INDEX NO. \_\_\_\_\_  
 MOTION DATE 1/11/10  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-3

4-5

6-7

Notiae 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 <sup>petition</sup> motion is decided by the annexed  
*decision, order and judgment.*

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

**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 141B).

Dated: 1-13-10

**JANE S. SOLOMON** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 Check if appropriate:  DO NOT POST  REFERENCE

Draft

Saved 12/12 ELRAC

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----x  
ELRAC INC. D/B/A ENTERPRISE  
RENT-A-CAR, and ELCO ADMINISTRATIVE  
SERVICES,

Petitioners,

Index No.: 112156/2009

-against-

FARRAH SINGLETON,

DECISION, ORDER and  
JUDGMENT

Respondent,  
and

ALFA VISION INSURANCE COMPANY  
ALETHA ALBERGA, and GARY ALBERGA

Proposed Additional  
Respondents.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and no entry shall be served based hereon. To  
obtain entry counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1418).

-----x  
**JANE S. SOLOMON, J.:**

ELRAC Inc. and Elco Administrative Services, petition to permanently stay the Uninsured Motorist Arbitration demanded by Respondent Farrah Singleton, on the ground that other insurance coverage exists. In the alternative, Petitioners seek to add to the petition Proposed Respondents Gary and Aletha Alberga, and Alfa Vision Insurance Company (Alfa), the Albergas' motor vehicle insurer. Alfa opposes the petition on the ground that the court does not have personal jurisdiction over it. The petition is denied for the following reasons.

**FACTS**

On March 22, 2008, Singleton was a passenger in a vehicle that was involved in an accident in New York with the

vehicle owned by Ms. Alberga and driven by Mr. Alberga. Ms. Alberga was insured by Alfa at the time of the accident.

Ms. Alberga's vehicle was registered in Virginia and had Virginia license plates. The Alfa policy listed her address as 9519 21<sup>st</sup> Bay Street, Norfolk, Virginia. However, both Mr. and Ms. Alberga have New York drivers licenses. (Opposition, Ex. 1 and Motion, Ex. B). Mr. Alberga's license lists his address as 3337 Fish Avenue, Bronx, New York.

Alfa is a Virginia insurance company and is not licensed to issue insurance policies in New York (Opposition, Ex. A). It investigated the claim. A claims adjustor contacted Ms. Alberga and requested proof of her Virginia residence (utility bill, telephone bill, credit card bill, etc.). Ms. Alberga was unable to furnish any proof (Opposition, Ex. B). Further investigation found that Ms. Alberga lives and works in New York City (Opposition, Ex. 5). Thus, Alfa determined that Ms. Alberga misrepresented the fact that she was a Virginia resident on her application.

Based on this misrepresentation, Alfa cancelled the policy *ab initio* in accordance with a Virginia statute (Va Code §38.2-309, discussed *infra*), and declined to cover Singleton's claim. This petition followed.

## DISCUSSION

**1. Jurisdiction over Alfa**

Alfa argues that it does not transact business in New York and, therefore, does not meet the minimum contacts required for personal jurisdiction pursuant to CPLR 302(a)(1) and New York Insurance Law §1213. ELRAC counters that Alfa is a part of a larger organization that is licensed to issue insurance in New York, and therefore has the requisite minimum contacts.

Alfa submitted the affidavit of Jaxie Bush (the Bush Affidavit), an underwriting processing manager for Alfa, which affirms the following: Alfa is not licensed in New York, does not issue insurance policies here, does not issue insurance policies to New York State residents, has no offices in New York, does not maintain a telephone listing or bank account in New York, does not advertise or solicit business in New York, has never issued or delivered policies in New York and has not designated the Superintendent of Insurance or Secretary of State of New York as its agent for receipt of process (Opposition, Ex. A).

ELRAC's contention that Alfa is somehow connected with another company that is licensed in New York is insufficient to rebut the facts in the affidavit. Accordingly, there is no personal jurisdiction over Alfa in this matter (see, *American Transit Insurance Co. V. Hogue*, 45 AD3d 329 [1<sup>st</sup> Dept, 2007])

[finding no personal jurisdiction in a matter nearly factually identical to the present matter)), and Alfa may not be added as an additional respondent.

## **2. The Existence of Other Insurance:**

There is no dispute that a conflict of law exists between the law of New York and the law of Virginia regarding the retroactive cancellation of insurance. Under Virginia law, an insurance policy may be cancelled retroactively if it was secured by a misrepresentation that was "material to the risk when assumed" (Va Code §38.2-309). Under New York law, an insurer may not retroactively cancel a policy (see, Vehicle and Traffic Law § 313).

To determine which State's law should apply, a court must apply a "grouping of contacts" inquiry to determine which State has the most significant contacts to the particular dispute (see, *Matter of Allstate Ins. Co. (Stolarz)*, 81 NY2d 219 [1993]).

In *Eagle Ins. Co. v. Singletary*, 279 AD2d 56 [1<sup>st</sup> Dept, 2000]), the First Department reviewed a conflict of laws question between Va Code §38.2-309 and VTL §313. The court held that

"[T]he insurance contract at issue, which was written to conform to Virginia law, was obtained in Virginia, from an insurance company doing business in Virginia, by a party . . . who represented that he was a resident of Virginia and that the insured vehicle would be principally garaged in Virginia. Applying the grouping of contacts inquiry to these facts, Virginia clearly had the most significant contacts with the parties and the contract. The fact that [the insured] misrepresented his residence and the place where the vehicle was to be

principally garaged did not operate to give New York any legitimate contact with the contract" (Id., at 59).

This determination is analogous to the present matter, and, accordingly, Virginia law will apply here.

ELRAC's argument that Alfa has not properly proven that Alberga's misrepresentation was material to the risk Alfa assumed, as required by Va Code §38.2-309, is unavailing. Alfa has offered sufficient proof of the misrepresentation and its materiality to the risk of insuring Ms. Alberga (see, Opposition, Exs. A-D). Accordingly, the Alfa policy was cancelled, and recovery under said policy is barred (Va Code §38.2-309), and it hereby is

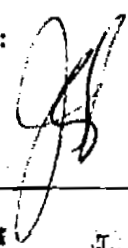
**ORDERED and ADJUDGED** that the petition is denied and the proceeding is dismissed; and it further is

**ORDERED** that the parties are directed to proceed to arbitration, and petitioners shall serve a copy of this Decision and Order upon the arbitrator; and it is further

**ORDERED**, that the Clerk is directed to enter judgment accordingly.

Dated: January 13, 2010

ENTER:



JUSTICE S. SOLOMON

**UNFILED JUDGMENT**  
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