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

PRESENT: Hon. Barry R. Ostrager Justice PART 60

Index Number : 110500/2010

STATE FARM MUTUAL AUTOMOBILE

vs.

BEDDINI, ANDREW A.

SEQUENCE NUMBER : 001

COMPEL OR STAY ARBITRATION

INDEX NO.

MOTION DATE 12/23/10

MOTION SEQ. NO.

MOTION CAL. NO.

this motion to/for

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

1-5

6-9

10

Cross-Motion: ☐ Yes ☒ No

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

is decided in accordance with accompanying Memorandum Decision and Judgment.

[redacted]

Dated: 1/4/11

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG ☐ SETTLE ORDER/ JUDG

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

[* 2]

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

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In the Matter of the Petition of

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

Index No. 110500/10

-against-

Decision and Order

For an Order staying the arbitration attempted to be had by

ANDREW A. BEDDINI and ERICA CHO,

Respondents.

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

Petitioner brings this proceeding under Article 75 of the C.P.L.R., seeking an order permanently staying arbitration. That branch of the petition is denied for the reasons set forth below. Petitioner's request for a temporary stay pending discovery is granted, without opposition, to the extent set forth below.

Petitioner seeks to stay the arbitration of an uninsured hit-and-run claim made by respondents Andrew A. Beddini and Erica Cho. On May 22, 2010, Mr. Beddini was driving his motor scooter with Ms. Cho as his passenger when a cardboard box, approximately 5' by 4', flew into his scooter, causing it to collapse. Mr. Beddini and Ms. Cho were thrown from the scooter and suffered injuries. Respondents filed a demand for arbitration of uninsured motorist claims under a policy issued by petitioner to Mr. Beddini. This proceeding followed shortly thereafter.

The policy in question defines an uninsured motor vehicle as a vehicle for which neither owner nor driver can be identified which causes bodily injury to an insured by physical contact with the insured or a motor vehicle occupied by the insured at the time of the accident. Petitioner argues that its motion to permanently stay arbitration must be granted because there was no "physical contact" with a uninsured or unidentifiable vehicle. The police report does not mention any unidentified vehicle as being involved in the accident, nor does the report mention physical contact between the motor scooter and any unidentified vehicle. Relying on In re Smith v. Great Am. Ins. Co., 29 N.Y.2d 116 (1971), petitioner argues that "physical contact" does not include "objects cast off or falling from a speeding or insecurely lade hit-and-run vehicle itself, such as parts of the vehicle or its load." Id. at 120.

In opposition, respondents submit an affidavit from Mr. Beddini and a non-party witness, who both state that the box flew off the back of a black vehicle or pick-up truck traveling in front of Mr. Beddini. They state that the cardboard box made physical contact with Mr. Beddini's vehicle, causing it to crash. Respondents maintain that the contact made by the box is sufficient to meet the "physical contact" requirement. Citing to In re Allstate Ins. Co. v. Killakey, 78 N.Y.2d 325, 329 (1991), respondents argue that the box should be considered an "integral part" of the unidentified vehicle.

The Court of Appeals has held that "'physical contact' occurs . . . when the accident originates in collision with an unidentified vehicle, or an integral part of an unidentified vehicle." In re Allstate Ins. Co. v. Killakey, 78 N.Y.2d at 329. In Allstate, a wheel and tire detached from an unidentified vehicle and were propelled into another vehicle, with a number of eye-witnesses to each

of those events. The Court of Appeals determined that the wheel and tire constituted an integral part of the vehicle and satisfied the requirement of physical contact. Id. at 329-30. The Court distinguished the wheel-and-tire scenario in Allstate from the scenario in In re Smith v. Great Am. Ins. Co., 29 N.Y.2d 116 (1971), in which snow and ice were cast off an unidentified vehicle and propelled into another vehicle, finding that snow and ice are clearly not integral parts of the vehicle and that contact with them and a claimant's vehicle would not constitute a collision under the physical contact rule. Allstate, 78 N.Y 2d at 330, citing Smith, 29 N.Y.2d 116.

The question for this court is whether cargo is an "integral part" of a vehicle. In Bajrami v. General Accident Ins. Co., 156 Misc. 2d 435, 438-9 (Sup. Ct. Richmond Co. 1993), the trial court determined that cargo that is purposefully placed in a vehicle as part of its use and operation is an integral part of the vehicle. In Bajrami, the claimant sought to compel arbitration of an uninsured motorist claim relating to injuries he sustained in an accident that was caused by debris falling off the back of a dump truck, causing the claimant's vehicle and another vehicle to swerve into each other. The trial court distinguished between the circumstances in Bajrami from Smith in that snow and ice are not purposefully placed in the vehicle, while cargo is. While the lower court's decision in Bajrami was vacated and remanded by the Appellate Division (Bajrami v. General Accident Ins. Co., 206 A.D.2d 527 [2d Dep't 1994]), the Appellate Division did so because it found that issues of fact existed regarding whether the vehicle that struck the claimant's vehicle was itself struck by the debris from the uninsured truck.

The evidence submitted establishes that contact between the cardboard box and the motor scooter did occur. Respondents submitted two affidavits, one from an uninterested party,

attesting to the fact that the cardboard box dislodged from another vehicle driving directly in front of respondents' vehicle and was propelled into respondents' vehicle. The cardboard box should be considered an integral part of the unidentified vehicle. Cargo purposefully placed and transported in a vehicle, which later dislodges from the vehicle and causes an accident by colliding with a claimant's vehicle, is more like the scenario in Allstate where the wheel and tire detached from the unidentified vehicle and collided with the claimant's vehicle, and less like the scenario in Smith in which snow and ice were cast off the unidentified vehicle. Snow and ice are not purposefully part of or intended to be part of a vehicle.

Petitioner's request that respondents provide various disclosure prior to arbitration is granted, without opposition. The arbitration will be stayed thirty (30) days, during which respondents are directed to provide petitioner with any and all discovery required under the policy. Accordingly it is hereby

ORDERED that the arbitration is temporarily stayed for thirty (30) days from the date hereof, after which time period the parties shall proceed to arbitration; and it is further

ORDERED that respondents are directed to provide petitioner with any and all discovery required under the policy, forthwith; and it is further

ADJUDGED that the remainder of the petition is denied and the proceeding is dismissed.

Dated: January 7, 2011

JOAN B. LOBIS, J.S.C.