SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

----------X

In the Matter of the Petition of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

-against- Index No. 108965/11

For an Order Staying the arbitration attempted to be Had by, ANTHONY J. CRAWFORD,

Respondent,

-and-

APPLE OF WESTCHESTER CORP., et al.,

Respondents.

----------X

DONNA M. MILLS, J.:

In this special proceeding, Respondent National Fire Insurance Company of Hartford ("National Fire"), moves pursuant to CPLR 3212 to dismiss the petition of State Farm Mutual Automobile Insurance Company ("State Farm") and to stay the arbitration demanded by Respondent Anthony J. Crawford ('Crawford") pursuant to CPLR 7503 (c). Respondent Property & Casualty Company Of Hartford ('Property") cross-moves for an Order vacating that portion of this Court's prior Order dated June 15, 2011, setting this matter down for a Framed-Issue Hearing and dismissing the Petition as against it.

This case involves an automobile accident. Respondent, Crawford is an operator of a vehicle issued by petitioner, State Farm. In December 5, 2008, Crawford was involved in the accident in Queens, New York when his vehicle collided with another vehicle owned by respondent Apple of Westchester Corp. ("Apple"). Claiming that the vehicle owned by Apple was uninsured at the time of the accident, Crawford seeks

uninsured motorist arbitration under petitioner's insurance policy.

National previously presented arguments as to why it should not be added to this action because petitioner could not show that National issued insurance to Apple. In granting State Farm's motion to add additional respondents, including National and Property, this Court ruled that additional proof was required for National to demonstrate that it had not issued a policy to Apple that was in effect on the date of the accident. This Court further decided that National had failed to disclose an exhaustive search to confirm that Apple never had a policy with National.

National now provides an updated and more thorough affidavit from John Shumway, a claims examiner assigned to represent National in this litigation which details the search that was conducted since this Court's June 15th ruling. The affidavit discloses that the search conducted was dated back from February 26, 2008 when the alleged policy was issued through the date of the affidavit. Further the Shumway affidavit lists the type of searches done: by the name of the insured (Apple), the name of the driver (Lawrence K. Johnson), and by the two policy numbers provided in the police report and in the extended insurance activity report.

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (Vamattam v Thomas, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find

movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (Andre v Pomeroy, 35 NY2d 361, 364 [1974]).

Here, National has submitted documentary evidence that the insured was insured by Hartford Financial Services - based on Motor Vehicle Department records. Additionally, National did a thorough enough search of its own records for information such as name of insured, name of driver and information that was provided in the police report. National concludes that based on its computer search it has no record of either the owner or driver being issued insurance over a 2 ½ year period. Once the requisite proof is offered, as National has done, the burden shifts to the party opposing summary judgment; to defeat the motion, it must, by producing evidentiary proof in admissible form, "show facts sufficient to require a trial of any issue of fact", (Joseph P. Day Realty Corp. v Aeroxon Prods., 148 AD2d 499 [2nd Dept 1989]). In opposition, State Farm offers no evidence to oppose the evidence presented on the search conducted by National. State Farm inaccurately argues that National waived its right to make a summary judgment motion.

In its petition to stay Crawford's request for arbitration for uninsured motorist's

benefits, the Petitioner produced an insurance activity expansion from the Department of Motor Vehicles which indicated that Property was the insurer of the alleged offending vehicle on the date of the accident underlying this matter. In opposition to State Farm's application, Property submitted a Notice of Non-Renewal of Insurance together with Certificate of Mailing, which showed that the policy that Property had issued to the alleged offending vehicle had been terminated by the non-renewal on July 10, 2008, some several months before the underlying motor vehicle accident.

In reply, State Farm did not challenge the authenticity or validity of the proof submitted by Property showing that the policy in question had been non-renewed. State Farm's claim was that Property was required to show that it properly and timely filed its non-renewal with the New York State Department of Motor Vehicles as purportedly required by Vehicle and Traffic Law Section 313.

This Court directed a Framed-Issue Hearing into the issue as to whether Respondent Property, properly non-renewed the policy of insurance that it had issued to Apple. Property asks this Court to resolve that issue based solely upon the papers that were submitted as part of the initial petition submitted by State Farm.

In its cross motion, Property refers to the VTL provision that it believes to have governed the within situation, with that provision not requiring it to have filed its Notice of Non-Renewal. Since Property acknowledges that it cannot put forth any proof of filing with the DMV, the sole issue to be resolved is one of law, to wit, whether such a filing was required for the non-renewal to be valid.

In opposition to the cross-motion, State Farm opines that provisions of the VTL and NYCRR did in fact require Property to file its Notice of Non-Renewal with the DMV

and that its failure to do so renders its purported Non-Renewal invalid.

VTL §313(2), provides in relevant part as follows:

> Upon the termination of an owner's policy of liability insurance, notice of such cancellation or other termination shall be filed by the insurer with the ccommissioner not later than thirty days following the effective date of such cancellation or other termination.

Applying the aforementioned statute to the facts in the case at bar, this Court interprets the section to require the filing of the non-renewal with the DMV, thus, Property's non-renewal shall be deemed invalid.

Accordingly it is

ADJUDGED that National Fire's motion for summary judgment is granted and the Petition is dismissed as against it; and it is further

ADJUDGED that Property & Casualty Company of Hartford's cross-motion is granted to the limited extent of vacating that portion of this Court's June 15, 2011 decision which directed a Framed Issue Hearing; and it is further

ADJUDGED that the petition is granted to the limited extent of permanently staying the arbitration of the uninsured motorist claim and directing Property & Casualty Company of Hartford to provide insurance coverage for the subject accident.

Dated: 11/23/11

ENTER:

J.S.C.

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).