

Interboro Ins. Co. v Willis
2013 NY Slip Op 32154(U)
September 6, 2013
Supreme Court, New York County
Docket Number: 153701/2013
Judge: Cynthia Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
CYNTHIA S. KERN
J.S.C.
Justice

PART _____

Index Number : 153701/2013
INTERBORO INSURANCE COMPANY
vs.
WILLIS, LANA
SEQUENCE NUMBER : 003
COMPEL OR STAY ARBITRATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

is decided in accordance with the annexed decision.

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

Dated: 9/6/13

CYNTHIA S. KERN, J.S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X
INTERBORO INSURANCE COMPANY,

Petitioner,

Index No. 153701/2013

-against-

DECISION/ORDER

LANA WILLIS, AMIL ACUPUNCTURE P.C.,
JACKSON HEIGHTS CHIROPRACTIC, P.C.,
ORLANDO ORTIZ, M.D., U.S. HEALTH PRODUCTS
INC. and VS SUNRISE MEDICAL P.C.,

Respondents.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition.....	<u> </u>
Replying Affidavits.....	<u>1</u>
Exhibits.....	<u>2</u>

Plaintiff commenced the instant action seeking a declaratory judgment that defendants are not entitled to no-fault coverage or reimbursement for their claims submitted on behalf of plaintiff's insured Lana Willis. Plaintiff now moves for an order granting the following relief:

(a) pursuant to CPLR § 2201 and § 7503(c) staying the pending arbitrations between plaintiff and defendants Amil Acupuncture P.C. ("Amil"), U.S. Health Products Inc. ("U.S. Health") and VS Sunrise Medical P.C. ("VS Sunrise") pending the resolution of the instant action; (b) pursuant to CPLR § 326 and § 327 further staying the arbitrations for purpose of removing the Arbitrations to this court; (c) pursuant to CPLR § 602 consolidating the arbitrations with the instant matter;

and (d) staying interest on the arbitration matters pending a determination on the instant motion. For the reasons set forth below, plaintiff's motion is denied without opposition.

The relevant facts are as follows. On September 2, 2012, defendants' assignor Lana Willis was allegedly involved in an automobile accident on wherein she sustained bodily injuries (the "Accident"). Thereafter, plaintiff sought treatment from the various defendants. As payment for said services, Ms. Willis assigned her right to collect first party no-fault benefits to the various defendants. According to plaintiff's complaint, plaintiff denied defendants' claims based upon Ms. Willis's failure to appear for Independent Medical Examinations ("IMEs").

Prior to the commencement of this action, defendants Amil, U.S. Health and VS Sunrise submitted their disputes regarding reimbursement of first-party no-fault benefits to arbitration before the New York No-Fault Conciliation Center of the American Arbitration Association (the "AAA").

Plaintiff now moves to stay the arbitration proceedings already initiated by Amil, U.S. Health and VS Sunrise and to have those proceedings consolidated with this Supreme Court declaratory judgment action. Defendants have not submitted opposition.

Pursuant to Insurance Law Section 5106(b), "[e]very insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party benefits . . . to arbitration." Additionally, the No Fault Mandatory Personal Injury Protection Endorsement provides:

Arbitration. In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Insurance. 11 N.Y.C.R.R. 65-1.1

It is well settled that these arbitration provisions were enacted to “reduce significantly the burden of automobile personal injury litigation on the courts” and “to offer a mechanism where disputes over reimbursable expenses can be resolved more swiftly and economically than is generally possible in plenary suits.” *Roggio v. Nationwide Mut. Ins. Co.*, 66 N.Y.2d 260, 264 (1985).

If arbitration has been initiated, a party may bring an application to stay an arbitration pursuant to CPLR § 7503 (b) “on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.” Additionally, “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case upon such terms as may be just.” CPLR § 2201.

In the present case, plaintiff’s motion seeking to stay the arbitrations already commenced by Amil, U.S. Health and VS Sunrise and remove and consolidate those proceedings with the instant action is denied as it has failed to demonstrate the conditions necessary to stay a properly initiated arbitration and remove the controversies to this court to be decided. It is undisputed that Amil, U.S. Health and VS Sunrise had the right to seek arbitration to challenge plaintiff’s denial of their no-fault claims and that arbitration is not barred by any other limitation under CPLR § 7502 (b). Thus, plaintiff has failed to establish a proper ground pursuant to CPLR § 7503 (b) warranting a stay. Additionally, the court declines to exercise its discretion to issue a stay under CPLR § 2201 as plaintiff has failed to show why this court should stay a properly initiated arbitration. Plaintiff’s contention that it would be in the interest of judicial economy to have all disputes arising from the Accident heard in this proceeding is unavailing. Indeed, this would be in direct contravention to the purpose of enacting the no-fault arbitration procedures in the first

place—i.e. to “reduce significantly the burden of automobile personal injury litigation on the courts.” *Roggio*, 66 N.Y.2d at 264.

Additionally, plaintiff’s reliance on CPLR § 327(a) and § 602 for removal and consolidation of the pending arbitrations from the AAA to this action is misplaced. The pending arbitrations are before the AAA, a completely separate entity from this court. Thus, the court does not have the authority to remove these disputes and consolidate them with the instant action. Simply put, neither CPLR § 327(a) nor § 602 endows the court with the authority to remove a properly initiated arbitration in front of the AAA to be decided by this court.

Based on the foregoing, plaintiff’s motion is denied in its entirety. This constitutes the decision and order of the court.

Dated: 9/6/13

Enter: CK
J.S.C.
CYNTHIA S. KERN
J.S.C.