

**Motor Veh. Accident Indem. Corp. v Countrywide  
Ins. Co.**

2013 NY Slip Op 32427(U)

October 4, 2013

Supreme Court, New York County

Docket Number: 450329/2013

Judge: Cynthia S. Kern

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

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

PART \_\_\_\_\_

Index Number : 450329/2013  
MOTOR VEHICLE ACCIDENT  
vs.  
COUNTRYWIDE INSURANCE COMPANY  
SEQUENCE NUMBER : 001  
DEFAULT JUDGMENT

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: 10/4/13

CK, J.S.C.

CYNTHIA S. KERN

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  
MOTOR VEHICLE ACCIDENT INDEMNIFICATION  
CORPORATION,

Plaintiff,

Index No.450329/2013

-against-

**DECISION/ORDER**

COUNTRYWIDE INSURANCE COMPANY,

Defendant.

-----X  
**HON. CYNTHIA 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>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

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Plaintiff Motor Vehicle Accident Indemnification Corporation (“MVAIC”) commenced the instant action to recover the sum of \$20,000, which it paid to a pedestrian who was injured during a motor vehicle accident involving a vehicle allegedly insured by defendant. Plaintiff now moves this court pursuant to CPLR § 3215(a) for an order granting default judgment against defendant for its failure to submit a timely answer. Defendant cross-moves for the following relief: (a) an order compelling acceptance of defendant’s answer; (b) an order pursuant to CPLR § 3126 striking plaintiff’s complaint, or in the alternative; (c) an order granting defendant summary judgment pursuant to CPLR § 3212 and § 3211(a)(3) on the grounds that plaintiff lacks

standing to bring this action and pursuant to CPLR § 3211(a)(7) on the ground that plaintiff fails to set forth a cause of action upon which relief may be granted, or in the alternative; (d) an order denying plaintiff's motion for default judgment on the ground that there exist triable issues of fact; and (e) staying any and all attempts by the plaintiff to collect any monies allegedly due pursuant to a judgment, including but not limited to, the service and enforcement of information subpoenas and motions for contempt. In its reply papers, plaintiff notes that it has accepted defendant's untimely answer and as such this court will only address defendant's cross-motion. For the reasons set forth below, defendant's cross-motion is granted only to the extent that this action is hereby dismissed as time-barred.

The relevant facts are as follows. Plaintiff is a corporation created pursuant to Article 52 of the Insurance Law of the State of New York and has the statutory responsibility of processing the claims and compensating innocent victims of motor vehicle accidents caused by financially irresponsible motorists. On or about January 28, 2009, a vehicle owned by Aaron Jimenez and allegedly insured by defendant was involved in a motor vehicle accident on West 181<sup>st</sup> Street and Audubon Avenue in New York, New York ("the accident") wherein Chriny Vargas ("Vargas") as a pedestrian was allegedly caused to suffer injuries and incur damages. Thereafter, Vargas submitted a claim to defendant for no-fault benefits and defendant denied coverage for the accident on the ground that Mr. Jimenez's policy was terminated prior to the date of the accident. As a result of defendant's denial of coverage, a claim was presented to plaintiff by Vargas claiming injuries and damages as a result of the accident. Thereafter, plaintiff entered into a settlement and made payment to Vargas in the amount of \$20,000. As a condition to the payment of the settlement, Vargas assigned all of his or her rights and claims to plaintiff.

On or about November 28, 2011, plaintiff commenced arbitration against defendant seeking priority of payments reimbursement for personal injury protection (“PIP”) benefits paid to Vargas and contesting defendant’s denial of coverage as improper. By a decision dated February 7, 2012, the arbitrator found in favor of plaintiff and concluded that defendant’s denial of coverage was improper as it failed to give notice of policy cancellation to the Commissioner of Motor Vehicles as required under Vehicle and Traffic Law 313.

On or about March 1, 2013, plaintiff commenced the instant action to recover the settlement sum of \$20,000 it paid to Vargas from defendant based upon defendant’s improper denial of coverage. Defendant now cross-moves to dismiss plaintiff’s action on several grounds including that this action is time-barred as it was not brought within the applicable three-year statute of limitations. Plaintiff opposes defendant’s cross-motion on the ground that this action is not time barred as the statute of limitations was tolled pursuant to CPLR § 205(a) and § 204(a) during the pendency of the related arbitration.

It is well settled in New York that an action to recover payments of first party benefits by MVIAC from a primary insurer who initially denied no-fault coverage is subject to a three-year statute of limitations, which begins to run upon the initial payment to the claimant. *See Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214 (1996). When there are several payments made to the claimant, the three year statute of limitations begins to run on the day each payment was made. *See Application of Budget Rent-A-Care*, 237 A.D.2d 153, 159 (1<sup>st</sup> Dept 1997). However, pursuant to CPLR § 204(a), “[w]here the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced.” Additionally, pursuant CPLR § 205(a),

“[i]f an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period.

In the present case, defendant’s cross-motion to dismiss plaintiff’s complaint on the ground that this action is time-barred is granted as plaintiff failed to commence the instant action within three years of making the settlement payment to Vargas. Plaintiff itself admits that the settlement amount was paid to Vargas on October 27, 2009. Accordingly, the statute of limitations in this action started to run on that date and plaintiff had until October 27, 2012 to commence the instant action against defendant. As it is undisputed that plaintiff filed the instant action on February 25, 2013, well after October 12, 2012, this action is time-barred.

Defendant’s contention that the statute of limitations was tolled pursuant to CPLR § 204(a) based on the prior arbitration between plaintiff and defendant is without merit. Contrary to plaintiff’s contention, the mandatory arbitration provision of Insurance Law § 5221(b)(6) did not serve as a statutory prohibition to plaintiff bringing the instant action pending disposition of the arbitration. Indeed, the only impact Insurance Law § 5221(b)(6) had on the parties to this action was that any controversy between plaintiff and defendant concerning the obligation to pay first party benefits had to be decided “by submission to mandatory arbitration.” Simply put, there was no statute that prohibited plaintiff from commencing this subrogation action against defendant and plaintiff presents absolutely no authority that states otherwise.

Additionally, to the extent plaintiff argues that the statute of limitations was tolled

pursuant to CPLR § 205(a), such argument is unavailing. Even assuming, *arguendo*, that Section 205(a) is applicable, plaintiff still failed to bring this action within six months after the arbitration decision was rendered.

Accordingly, defendant's cross-motion is granted to the extent that plaintiff's action is hereby dismissed on the ground that it is time-barred and this court need not address the remainder of defendant's cross-motion. The clerk is directed to enter judgment accordingly. This constitutes the decision and order of the court.

Dated: 10/4/13

Enter: \_\_\_\_\_

CK

J.S.C.

CYNTHIA S. KERN  
J.S.C.