

Praetorian Ins. Co. v Hutchinson

2014 NY Slip Op 30752(U)

January 8, 2014

Supreme Court, Richmond County

Docket Number: 85012/2013

Judge: Kenneth McGrail

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

13-R-016

85012/13

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PRAETORIAN INSURANCE CO.,

Index No. 850122013

Petitioner,

Present:

Kenneth R. McGrail

Special Referee

-against-

MADDIE HUTCHINSON and VANESSA BROWN,

DECISION and ORDER

Respondents.

-and-

**ZANGAR JEFFERSON, PROGRESSIVE ADVANCED
INSURANCE COMPANY, LIBERTY MUTUAL FIRE
INSURANCE COMPANY, JOHN DOE 1-10 and/or JANE
DOE 1-10 (said names being fictitious and used to
designate persons(s) or entity(ies) whose real identities
are as yet unknown),**
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This matter was referred to me pursuant to the Administrative Order of this Court (McMahon, DAJ.) dated June 26, 2013, whereby I am directed, pursuant to the stipulation of the parties, to conduct a hearing to determine the issue of contact between the insured vehicle and another.

A hearing was held before me on December 3, 2013, at which respondents presented their own testimony and that of New York City Police Office Pedro Teco, the officer who responded to the scene and took the police report. Additional respondents presented the testimony of Deontee Manneh, a passenger in the allegedly offending vehicle.

FINDINGS OF FACT

1. On the evening of July 29, 2011, Maddie Hutchinson, Vanessa Brown, Deontee Manneh and Deontee Grimes attended a party at a bar/restaurant on the South Shore of Staten Island, New York. Hutchinson and Brown each testified that they did not drink alcohol at the party. Manneh

acknowledged drinking during the two hours she was there.

2. The four left the restaurant at approximately the same time in the early morning of July 30th, taking two different cars. Hutchinson and Brown were in a 2000 Saab registered to a Justina Moore, and operated by Brown. Manneh, Grimes and at least one other passenger were in a black SUV operated by Grimes and owned by Manneh's father, Zangar Jefferson.

3. The SUV followed the Saab onto Route 440 North, also known as the West Shore Expressway. The cars passed each other a few times as they traveled north. At some point, the SUV came alongside the right side of the Saab and made contact with it. Brown lost control of her car and hit the guardrail. Brown saw the driver of the SUV, who she recognized, and later identified, as Grimes. Hutchinson, sitting in the front passenger seat of the Saab, saw the SUV make contact with the Saab and felt the impact; however, she did not see the driver. Neither Brown nor Hutchinson saw the SUV's license plate.

4. The driver of the SUV stopped her vehicle and a passenger, identified as Nahjee Dunbar, exited the vehicle and engaged in a conversation with the respondents and later spoke with the responding officer.

5. The black SUV left the scene before Officer Teco arrived.

6. Police Officer Pedro Teco responded to the scene and spoke with both Brown and Dunbar. He observed damage to the front and passenger side of the Saab. He did not see any other vehicle at the scene. Brown acknowledged that she told Officer Teco that she was hit by a black car, but she did not identify Grimes as the driver. Following his conversation with Brown and Dunbar, Officer Teco prepared a police report at the scene. He entered "unknown" in the information boxes for the driver and owner of the black car.

7. At the hospital after the accident, Dunbar gave Brown the license plate number of the car Grimes

was operating. The next day, Brown went to the 122nd police precinct and spoke with Officer Teco. Following that conversation, Officer Teco prepared an amended report that he attached to the first accident report. The amended report identified the registered owner of the offending vehicle as Zangar Jefferson, based on “information supplied by driver of vehicle # 1 [*i.e.*, Brown].”

8. Having had the opportunity to observe the witnesses at trial, I fully credit the testimony of Brown and Hutchinson regarding the circumstances of the accident.

9. Having observed the witness on the stand, I reject the testimony of Decontee Manneh to the extent she testified that the Brown vehicle was speeding and driving erratically, and that neither her vehicle nor any other vehicle came in contact with the Saab before it hit a guardrail.

10. Having had the advantage of observing the witnesses and having reviewed the documentary evidence, including photographs of the subject vehicles, I conclude that there was physical contact between the insured vehicle and the vehicle operated by Grimes.

11. It is undisputed that the Grimes vehicle was insured at the time of the accident.

CONCLUSIONS OF LAW

Physical contact between the insured vehicle and an unidentified, uninsured or underinsured vehicle is a condition precedent to arbitration under an insurance policy’s uninsured motorist endorsement (*see* Insurance Law § 5217). The burden is upon the claimant to show, at least prima facie, that actual physical contact occurred (*Nova Cas. Co. v. Musco*, 48 AD3d 572 [2nd Dept 2008]).

“The insured has the burden of establishing that the loss sustained was caused by an uninsured vehicle, namely, that physical contact occurred, that the identity of the owner and operator of the offending vehicle could not be ascertained, and that the insured’s efforts to ascertain such identity were reasonable” (*Matter of Nova Cas. Co. v Musco*, 48 AD3d 572, 573 [2nd Dept 2008]; *see Matter of Liberty Mut. Ins. Co. v Vella*, 83 AD3d 716, 717 [2nd Dept 2011]; *Matter of Newark*

Ins. Co. v Caruso, 14 AD3d 613, 614 [2nd Dept 2005])

Here, based on the credible testimony and documentary evidence, respondents have met their burden of proof as to physical contact (*Liberty Mut. Ins. Co. v. Vella*, 83 AD3d 716 [2nd Dept 2011]). However, the offending vehicle was properly identified and was insured at the time of the accident.


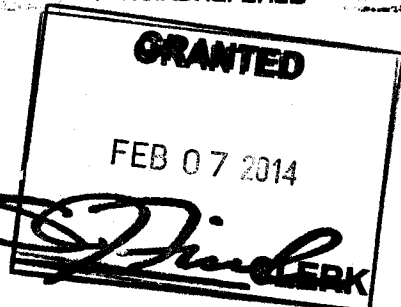

Accordingly, it is

ORDERED that the application to permanently stay the arbitration is granted; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

ENTER

Dated January 8, 2014


KENNETH McGRAIL
SPECIAL REFEREE


CLERK