

Matter of Government Empls. Ins. Co. v Wong
2014 NY Slip Op 31249(U)
May 8, 2014
Sup Ct, New York County
Docket Number: 651248/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:HON. JOAN A. MADDEN
Justice

PART 11

In the matter of the Application of GOVERNMENT EMPLOYEES INSURANCE COMPANY to stay arbitration,

INDEX NO. : 651248/13

Petitioner,

MOTION DATE : 4-17-14

- v -

MOTION SEQ. NO.: 002

KAI MING WONG,

Respondent.

The following papers, numbered 1 to _____ were read on this motion to reargue.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Petitioner, Government Employees Insurance Company’s (“Geico”) motion to reargue is granted to the extent of permitting reargument and, upon reargument, the court grants Geico’s motion to the extent of temporarily staying arbitration pending a hearing as to whether the Kai Ming Wong (“Wong”), who is now deceased, was a “resident relative” of the insured’s household at the time of the loss.¹

Geico issued an insurance policy containing uninsured/underinsured motorist benefits to Ling Huang (hereinafter “the insured”). The insured seeks to recover under the policy for injuries sustained by his father, Wong, when he was seriously injured on August 9, 2010, after he was struck by a motor vehicle that left the scene of the accident. This petition involves issues of

¹Geico alternatively moves to renew, but court need not consider it. In any event, as there is no new evidence, renewal is not an appropriate remedy.

whether Wong was a resident of the insured's household at 82 Mulberry Street, New York, NY at the time of the accident. By decision, order and judgment dated December 20, 2013, this court denied Geico's stay of arbitration, finding, inter alia, that the evidence submitted by respondent was sufficient to show that Wong was a resident of the insured's household at the time of the accident ("the original decision")

Geico now moves for reargument of the original decision and, upon reargument, asserts that a frame issue hearing be ordered with respect to Wong's residency as the court overlooked the documentation provided with the original submissions indicating that Wong's address at the time in issue was 7722 16th Avenue, Brooklyn, New York, where one of Wong's daughters resides.² Pei Fen Huang, ("Huang") who is also a daughter of Wong and the administrator of Wong's estate, opposes the motion.³

A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. See, Foley v Roche, 68 AD2d 558, 567 (1st Dept 1979).

Here, reargument is properly granted based on documents submitted by Geico, as well as the nature of documents submitted by respondent in opposition to the original petition. Specifically, the police report submitted by Geico not only identifies Wong's address as Huang's Brooklyn residence but also Wong's date of birth, which information would not necessarily be known by the neighbor who Huang states she believes gave her Brooklyn address to the police officer. Huang and the insured state in their affidavits that Wong was unconscious as a result of the accident. However, no medical records were produced in support of these statements. Moreover, Geico submits billing records for medical services sent to the Brooklyn

²The submissions do not identify the daughter's name and the insured and Huang refer to her as their sister.

³In the original decision, the court directed that Huang, as administrator of the estate of respondent Kai Ming Wong, be substituted as respondent but the order has not been implemented. The court will again order the substitution in connection with this decision and order.

address. The court also notes that the tax records for Wong submitted in opposition of the petition are from 1997, which is thirteen years before the accident. The other documentation submitted by respondent is also not dispositive.

Under these circumstances, upon reargument, the court vacates and rescinds its original decision directing that the parties proceed to arbitration, and finds that a framed issue hearing is needed to resolve the factual dispute as to Wong's residency at the time of the accident. See e.g., Continental Cas. Co. v. Lecei, 47 AD3d 509 (1st Dept 2008)(issue of whether respondent was occupying the insured's truck at time of accident raised factual question requiring framed issue hearing); Eagle Ins. Co. v. Perez, 299 AD2d 544 (2d Dept 2002)(where factual issue existed as to whether respondent was a covered person under insured's policy, framed issue hearing should be ordered).

Accordingly, it is

ORDERED that Geico's motion for reargument is granted and, upon reargument, the court's decision and order dated December 20, 2013 is hereby vacated and rescinded; and it is further

ORDERED that the petition to stay arbitration is granted to the extent that this matter is referred to Special Referee to hear and report on the preliminary issue of whether Wong was a "resident relative" of the insured's household at the time of the accident, and the arbitration is stayed pending such hearing; and it is further

ORDERED that the powers of the Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@court.state.ny.us) for placement at the earliest possible date on calendar of the Special Referee Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the References link under Courthouse procedures), shall assign this matter to a Special Referee to hear and report as specified above; and it is further

ORDERED that counsel for Geico shall, on or before May 30, 2014, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at the References link of the Court website) containing all the information called for

therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel of the date fixed for the appearance on the matter upon the calendar of the Special Referee Part; and it is further

ORDERED that the failure of petitioner to comply with the immediately preceding paragraph shall result in the dismissal of the petition; and it is further

ORDERED that the parties shall appear at the hearing, including with any witnesses and/or evidence they seek to present, and shall be ready to proceed on the date fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee Part in accordance with the rules of that Part; and it is further


ORDERED that the hearing shall be conducted in the same manner as a trial before a Justice without a jury (CLR 4320(a))(the proceeding will be recorded by a court reporter, the rules of evidence apply, etc) and, except as otherwise directed by the assigned Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completed; and it is further

ORDERED that the motion to confirm or reject the Report of the Special Referee shall be made within the time specified in CLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that in the event that after the hearing directed above the parties are ordered to proceed to arbitration based on the decision of the Special Referee as confirmed by an order of this court, prior to such arbitration, respondent shall provide Geico medical authorizations and medical records, relating to Wong's treatment as a result of the accident; and it is further

ORDERED that Pei Fen Huang, as the administrator of the estate of respondent Kai Ming Wong is substituted as respondent in the place and stead of respondent Kai Ming Wong, and respondent shall serve a copy of this order on the Clerk of Trial Support (room 158) who shall mark the court's records to reflect such substitution.

Dated: ~~April 2014~~
May 8, 2014



J.S.C. HON. JOAN A. MADDEN
J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION