Matter of Government Empls. Ins. Co. v Ioseb Chalatashvili
2014 NY Slip Op 32517(U)
September 12, 2014
Supreme Court, Kings County
Docket Number: 500948/14
Judge: Debra Silber
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9

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In the Matter of the Application of GOVERNMENT EMPLOYEES INSURANCE COMPANY to Stay the Arbitration,

Petitioner,

-against-

IOSEB CHALATASHVILI and BESIK SHARABIDZE,

Respondents,

-and-

GMAC DIRECT INSURANCE CO., CARLOS HIDALGO, XINOS CONSTRUCTION CO.,

Proposed Additional Respondents.

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DECISION/ORDER

Index No. 500948/14

Submitted: 6/26/14

Motion Sequence #1

HON. DEBRA SILBER, A.J.S.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioner's petition to stay arbitration.

Papers	Numbered
Amended Notice of Petition and Exhibits Annexed.....	1-6
Affirmation in Support and Exhibits Annexed.....	7-10
Affirmations in Opposition and Exhibits Annexed.....	11-12, 13-19
Reply and Exhibits Annexed.....	20-21

Upon the foregoing cited papers, the decision/order on this petition is as follows:

Petitioner Government Employees Insurance Company (GEICO) moves for an order permanently staying arbitration of respondents' uninsured motorist claims, on the grounds that the offending vehicle was insured. Respondents oppose the petition and

claim it was filed late and thus must be dismissed. Proposed additional respondents GMAC Direct Insurance Co., Carlos Hidalgo and Xinos Construction Co. oppose the petition in part. The petition is granted to the extent that the court directs that there shall be a temporary stay of arbitration, and the matter shall be set down for a framed issue hearing on the issue of the contact/involvement of the vehicle owned by proposed additional Respondent Xinos Construction Co., and operated by proposed additional respondent Carlos Hidalgo and insured by proposed additional respondent GMAC Direct Insurance Co. In addition, the branch of the petition which seeks to amend the petition to substitute as the proper respondent an individual named Lia Shubitidze (in place of Besik Sharabidze) is granted, as the petitioner did not name the proper respondent in this proceeding.

This matter concerns a two-vehicle auto accident which took place in Queens County on October 5, 2009. Respondent Chalatashvili was the driver of the vehicle which was owned by the insured, Besik Sharabidze, who is mistakenly named in the petition as one of the persons who claims injuries. Respondent Lia Shubitidze was a passenger.

Following the accident, respondents started receiving medical treatment for injuries they sustained in the accident, paid for by the no-fault benefits of petitioner's insurance policy.

On August 22, 2011, an arbitration was held concerning the involvement of the GMAC insured vehicle for purposes of the property damage claim. As indicated in the PIP decision dated August 23, 2011, GMAC did not participate in this arbitration. As a result, the arbitrator found that claimant proved all their property damage.

However, since GMAC did not participate in the arbitration, that ruling has no

collateral estoppel effect. Further, respondents, one being a permissive driver of the car, and the other a passenger, were not the vehicle's owner, and were not in privity with petitioner, and thus did not have an opportunity to fully litigate the issue of liability in the property damage arbitration. Vicarious liability does not create privity for purposes of collateral estoppel. See, *Carter v Gospel Temple Church,* 19 AD3d, 353 [2nd Dept 2005]; *Baldwin v Brooks,* 83 AD2d 85 [4th Dept 1981].

Respondent's attorneys subsequently pursued a bodily injury claim with GMAC and GMAC concluded that the proposed additional respondents were not involved in the accident and denied liability. Thereafter, respondents' attorneys pursued a claim for Uninsured Motorist (UM) benefits with petitioner, as provided for under petitioner's policy.

On December 29, 2013, respondents' attorneys sent petitioner a letter which they now claim constituted a notice of intent to file for arbitration. In actuality, the letter states that they intended at some future date to arbitrate the matter. The letter did not include an unequivocal demand nor did it contain the requisite notice that petitioner had 20 days to file for a stay.

On February 4, 2014, respondents Ioseb Chalatashvili and Lia Shubitidze served an actual Demand for Arbitration. On that same date, probably in response to the December 29, 2013 letter, petitioner filed its petition to stay arbitration which is now before the court.

The facts of this case are remarkably similar to those in *Matter of State Farm Mut. Auto. Ins. Co. v Urban*, 78 AD3d 1064 [2nd Dept 2010].

In *Urban,* respondent, by letter dated December 22, 2008, sent by certified mail, return receipt requested, informed the petitioner therein that he intended to arbitrate a

claim under his State Farm policy for, inter alia, supplementary uninsured/underinsured motorist benefits with respect to his accident, since the accident involved a motorist who left the scene of the accident. In the letter, respondent provided information concerning his policy number, his name and address, and a warning that, unless within 20 days of receipt thereof petitioner applied to stay arbitration, it would "be precluded from doing so." The signed return receipt for the letter demonstrated that ti was received on December 26, 2008. Petitioner responded to respondent's counsel by letter dated April 8, 2009, in which it denied respondent's claim for supplementary uninsured/underinsured motorist benefits. Then, on June 10, 2009, by certified mail, return receipt requested, respondent sent petitioner a "Request for Arbitration" with the American Arbitration Association (hereinafter the AAA). This request was received by petitioner on June 12, 2009. On June 22, 2009, petitioner petitioned for an order pursuant to CPLR 7503 (c) staying the arbitration. Respondent cross-moved to dismiss the petition as untimely. The Supreme Court denied the cross-motion and granted the petition to the extent that it set the matter down for a framed-issue hearing and directed respondent to provide discovery to petitioner in the event that the matter proceeded to arbitration.

The Second Department upheld the Supreme Court, finding that, to be considered a valid notice of the intention to arbitrate, the notice must identify the agreement under which arbitration is sought and the name and address of the person serving the notice in addition to containing the statutory 20-day warning that failure to commence a proceeding to stay arbitration will preclude an objection to arbitration. See also, CPLR 7503 [c]; *Matter of Blamowski*, 91 NY2d 190, 195 [1997]; *State Farm Mut. Auto. Ins. Co. v Szwec*, 36 AD2d 863 [1971].

Despite assertions to the contrary by the respondents, petitioner did not fail to file the petition to stay the arbitration within the 20 day statutory period. It was filed on the same day as the initial demand for arbitration (and was subsequently amended on February 19, 2014).

The December 29, 2013 letter previously sent to petitioner by respondents' attorney, which stated that they intended at some future date to arbitrate the matter, did not constitute a demand for arbitration as defined by the statute, as is alleged by respondents. See also, *Countrywide v Ramirez,* 13 Misc 3d 1209 [Sup Ct Nassau Cty], *reversed on other grounds,* 104 AD3d 850 [2nd Dept]. "[O]ne who would require strict compliance' with the provisions of CPLR Article 75 must be held to the fullest standards of practice' . . . Since [t]he expiration of this 20-day period terminates a party's right to contest the obligation to arbitrate . . . the validity of the 20-day limitation period depends on the sufficiency of the notice.'" *Northern Assurance Company of America v Bollinger*, 256 AD2d 580, 581 [2nd Dept 1998]. An equivocal letter does not constitute a demand to arbitrate. See, *Quality King Distributors, Inc. v E & M ESR*, 36 AD3d 780 [2nd Dept 2007]. Accordingly, respondents' argument that the petition to stay arbitration was untimely under CPLR 7503 has no merit.

Moving on to the substantive (as opposed to the procedural) issues in this matter, petitioner avers that the arbitration should be stayed because the identity of the second vehicle in the accident was never in doubt, and that vehicle is insured by proposed additional respondent GMAC. However, petitioner's contention that GMAC is not denying involvement of its insured's vehicle in the accident is mistaken, as GMAC's opposition to the motion makes clear. In particular, the claims examiner wrote to respondents' counsel that "our insured has denied being involved in this impact but did

witness another vehicle involved and reported that to the police at the scene."

As such, the petition is granted to the sole extent that the court directs a temporary stay of arbitration, and the matter shall be set down for a framed issue hearing on the issue of the involvement/contact of the vehicle owned by proposed additional respondent Xinos Construction Co., operated by proposed additional respondent Carlos Hidalgo and insured by proposed additional respondent GMAC Direct Insurance Co.

In addition, the branch of the petition which seeks to amend the petition to substitute Lia Shubitidze for Besik Sharabidze is granted. Amendments of pleadings are permitted in this circumstance, even though the statute of limitations has run, as the party misnamed (Lia Shubitidze) was properly served with process (service was effectuated on the attorney she shares with respondent Chalatashvili). There has been no prejudice and nobody could have been confused by the error. See, *Air Tite Manufacturing v Acropolis Assocs.*, 202 AD2d 1067 [4th Dept 1994]. Accordingly, the caption is amended to read:

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The foregoing constitutes the decision and order of the court. A Referral Order which refers the framed issue hearing to a referee to hear and report is issued simultaneously herewith. Prior to the commencement of the hearing, counsel may stipulate that the Referee hear and determine, if they so agree.

Dated: Brooklyn, New York
September 12, 2014

Hon. Debra Silber, A.J.S.C.

Hon. Debra Silber
Justice Supreme Court

FILED
KINGS COUNTY CLERK
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