

Fiduciary Ins. Co. of Am. v Anderson

2014 NY Slip Op 32570(U)

September 24, 2014

Supreme Court, New York County

Docket Number: 651596/2014

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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FIDUCIARY INSURANCE COMPANY OF AMERICA,

Petitioner,

Index No. 651596/2014

-against-

Decision and Order

GENEVIEVE ANDERSON,

Respondent,

YANA SIGALOV and LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

Proposed Respondents.

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JOAN B. LOBIS, J.S.C.:

This special proceeding arises out of a motor vehicle accident on March 29, 2013. Fiduciary Insurance Company of America (“Fiduciary”) petitions pursuant to Article 75 of the Civil Practice Law and Rules for an order staying the arbitration requested by Respondent Genevieve Anderson, or, in the alternative, directing a framed issue hearing on the applicability of the arbitration agreement. Respondent Genevieve Anderson and Proposed Respondents Yana Sigalov and Liberty Mutual Fire Insurance Company (“Liberty Mutual”) oppose the petition in part.

On March 29, 2013, Genevieve Anderson was a passenger in a 2009 Ford taxicab owned by Sujac Taxi Service, Inc., (“Sujac”). Sujac had an automobile insurance policy from Fiduciary. At approximately 1:52 pm, a 2013 Bentley motor vehicle ran a red light and hit the taxicab. Ms. Anderson claims to have sustained a number of injuries including, among others, an internal derangement of the left shoulder, a left distal clavicle fracture, and a left shoulder sprain.

The Bentley was leased by Yana Sigalov. The previous evening Ms. Sigalov and her son went to a holiday gathering on Henry Street, in Brooklyn, New York. She had parked the vehicle on the street. At approximately 1:00 am on March 29, 2013, Ms. Sigalov and her son returned to the parking space to find that the vehicle was not there. Only the two of them had keys to the Bentley. Ms. Sigalov was insured by Liberty Mutual.

Following the accident, Ms. Anderson filed a Supplementary Uninsured/Underinsured Motorist (SUM/UM) claim with Fiduciary, which was denied by letter dated July 3, 2013. On May 5, 2014, Ms. Anderson served a demand on Fiduciary for arbitration before the American Arbitration Association New York State SUM/UM Arbitration Tribunal, but did not specify whether the arbitration was for SUM or UM. She also brought an action against Ms. Sigalov and the Sujac taxicab in New York County in April 2014. See Anderson v. Mezine, Index No. 400281/2014.

Fiduciary now petitions this Court for an order staying the arbitration or directing a framed issue hearing as to whether there is an applicable arbitration agreement between the parties, whether there is UM coverage for Ms. Anderson under the Fiduciary policy, if other insurance equals or exceeds the UM coverage of the Fiduciary policy, whether Ms. Anderson has complied with all conditions precedent to such coverage, and whether other applicable UM coverage applies to reduce any sums that may be applicable under the Fiduciary policy. Fiduciary also requests an order directing Genevieve Anderson to comply with the terms of the Fiduciary Policy by furnishing medical authorizations and submitting to an examination under oath and physical examinations.

Fiduciary argues that under the Fiduciary policy, no SUM/UM Arbitration or coverage exists for Ms. Anderson. It contends that no SUM/UM coverage was part of their policy. Fiduciary claims that it does not waive its right to discovery if the Court determines that Ms. Anderson is entitled to arbitration.

In opposition, Ms. Anderson contends that she filed for SUM/UM Arbitration because Ms. Sigalov denies that her vehicle was used with consent or permission at the time of the accident. Ms. Anderson requests that the Court order a hearing on the issue of whether the Bentley was operated with permission and consent at the time of the accident, and allow discovery and depositions of the proposed Respondents, Ms. Sigalov and Liberty Mutual.

In a separate opposition to the petition, Ms. Sigalov and Liberty Mutual state that they have no objection to testifying at a Framed Issue Hearing as to the circumstances of the theft of Ms. Sigalov's Bentley. Proposed Respondents oppose depositions, however, and cite to Section 408 of the Civil Practice Law and Rules in support of their position. They also attach the affidavit of Ms. Sigalov, where she explains that her vehicle was stolen while she was at a holiday gathering with her son.

In reply, Fiduciary contends there are contradictions between Ms. Sigalov's affidavit and the claim she submitted to her insurance company. In particular, Fiduciary claims that the affidavit states that Ms. Sigalov and her son have keys to the Bentley, but the insurance claim does not state whether Ms. Sigalov could account for her keys on the night of the theft. Fiduciary claims that Ms. Sigalov's opposition does not rebut the issues of consent, implied

permission, and the presumption of permissive use of the Bentley. It argues that these issues should go to a jury following depositions and discovery, which would take place in the separate action under Index No. 400281/2014.

The party seeking a stay of arbitration has the burden of showing sufficient facts to establish justification for the stay. AIU Ins. Co. v. Cabreja, 301 A.D.2d 448, 449 (1st Dep't 2003). When there is a genuine triable issue, arbitration is to be stayed pending a hearing on the threshold issue. Empire Mut. Ins. Co. v. Zelin, 120 A.D.2d 365, 366 (1st Dep't 1986). In this matter, the parties are in agreement that a hearing is necessary to resolve whether Ms. Sigalov's Bentley was operated with permission and consent at the time of the accident. Furthermore, SUM/UM arbitration can only go forward if there is an applicable arbitration agreement in the Fiduciary policy. Accordingly, it is

ORDERED that this matter is referred to a Special Referee to hear and report with recommendations, or hear and determine, if the parties so stipulate in writing, pursuant to Section 4317 of the Civil Practice Law and Rules, whether Ms. Sigalov's Bentley was operated with permission and consent at the time, of the accident, whether there is an applicable arbitration agreement between the parties, whether there is UM coverage for the Respondent under the Fiduciary policy, if other insurance equals or exceeds the UM coverage of the Fiduciary policy, whether Respondent has complied with all conditions precedent to such coverage, and whether other applicable UM coverage applies to reduce any sums which may be applicable under the Fiduciary policy; it is further

ORDERED that Petitioner shall, within 15 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Special Referee Information sheet upon the Special Referee Clerk in the Motion Support Office to arrange a date for the reference to a Special Referee; and it is further

ORDERED that the petition to permanently stay the arbitration is held in abeyance pending the recommendation of the Special Referee.

Dated: *Sept 24* 2014

ENTER:



JOAN B. LOBIS, J.S.C.