

Estate of Gabriel v Doyle
2014 NY Slip Op 34003(U)
June 2, 2014
Supreme Court, Westchester County
Docket Number: 51461/2014
Judge: Charles D. Wood
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
The Estate of IRIS OFELIA MIRANDA GABRIEL
Deceased, by the EXECUTOR OF HER ESTATE THE
PUBLIC ADMINISTRATOR OF WESTCHESTER
COUNTY,

Plaintiffs,

- against -

GREGORY DOYLE; NINA A PELELLÀ-DOYLE AND
MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORP.,

Defendants.

-----X
WOOD, J.

**FILED
AND
ENTERED
ON June 4 2014
WESTCHESTER
COUNTY CLERK**

DECISION AND ORDER

Index No. 51461/2014
Sequence No. 1

The following papers numbered 1-17 were read in connection with the motion to dismiss of defendant Motor Vehicle Accident Indemnification Corp. ("MVAIC"):

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| MVAIC's Notice of Motion, Counsel's Affirmation, Exhibits. | 1-5 |
| Plaintiff's Counsel's Affirmation in Limited Opposition, Exhibits. | 6-16 |
| MVAIC's Counsel's Reply Affirmation. | 17 |

NOW, based upon the foregoing papers, the motion is decided as follows:

MVAIC is a not-for profit corporation created to provide compensation to innocent victims of motor vehicle accidents for the injury and financial loss inflicted upon them through no fault of their own, involving uninsured or hit and run vehicles (Insurance Law § 5201(b)(2)).

In order to recover MVAIC benefits, the injured party must be eligible for MVAIC benefits, which requires that the party not have any other available insurance covering its claim which arose from the use and operation in New York state of an uninsured motor vehicle (Insurance Law § 5201[b]). The injured party must be a “qualified person”, defined by MVAIC, as “someone other than (1) an insured, or (2) the owner of an uninsured motor vehicle and his/her spouse when a passenger in such vehicle.” A qualified person is required to provide MVAIC with notice of the claim. Insurance Law § 5208(2)(a) requires that to qualify for benefits as a victim of a hit and run accident, a claimant must file a sworn affidavit within 90 days of the accrual of the cause of action. To qualify as a victim of an uninsured motorist accident, a claimant must file a sworn affidavit within 180 days of the accrual of the cause of action or within 180 days of the claimant’s notice of disclaimer or denial of coverage by an insurer alleged to be liable for the damages.

Here, plaintiff has failed to file a timely notice of claim with either of the above mentioned statute of limitation provided by Article 52 and any relief from MVAIC is time barred. These time frames have been strictly applied by the courts (Bailey v. MVAIC, 67 AD2d 707 [2d Dept 1979]), and may be fatal to a claimant’s right to receive benefits (Matter of Hempstead Gen. Hosp. v. MVAIC, 97 AD2d 544 [2d Dept 1983]).

In the instant motion, MVAIC asserts that plaintiff is not eligible for MVAIC no-fault benefits because plaintiff failed to comply with the reporting requirements of Insurance Law Article 52, by neglecting to provide a timely notice of claim. In opposition, plaintiff admits that the failure to file a notice of claim with MVAIC as required by Section 5208 of the New York State Insurance Law, stating as an excuse that the notice of claim was not timely filed because plaintiff’s counsel was not retained until January 24, 2014. Moreover, plaintiff divulges that

plaintiff may not even be entitled for benefits with MVAIC because there is available coverage with Mass Bay Insurance/Hanover Insurance. Lastly, MVAIC points out that a court order granting permission to sue MVAIC is a condition precedent to initiate a personal injury action directly against MVAIC (which has not been done here).

Plaintiff seeks that the relief sought by MVAIC be granted to the extent that plaintiff has the right to pursue a claim against defendant MVAIC should it be determined in the future that defendant Doyle was not the cause of death of plaintiff. The court notes that there is no proper application before it for leave to file a late claim with MVAIC, and MVAIC has detailed prejudice to such a late filing. In any event, pursuant to Insurance Law § 5208(c), an application to the Court for leave to file a late Notice of Claim with MVAIC must be made within one year of the accrual of the cause of action. The accident occurred on February 22, 2012.

Based upon the foregoing, the court finds that plaintiff failed to comply with Insurance Law Article 52. Accordingly, it is hereby

ORDERED, that MVAIC's motion to dismiss is GRANTED, and the summons and complaint against defendant Motor Vehicle Accident Indemnification Corporation is dismissed; and it is further

ORDERED that MVAIC shall submit a copy of this Decision and Order with notice of entry to the Westchester County Clerk, and the Clerk shall mark his records accordingly; and it is further

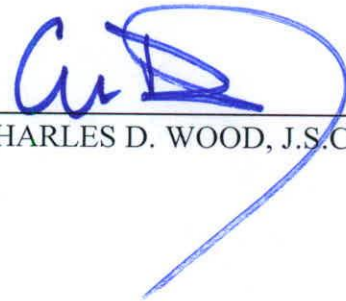
ORDERED that MVAIC shall serve a copy of this Decision and Order with notice of entry upon the remaining parties hereto within ten (10) days of entry, and file proof of service on NYSCEF within five (5) days of service; and it is further

ORDERED, that the remaining parties are directed to appear in the Preliminary Conference Part on **June 30th** at 9:30 a.m. in Room 811 of the Westchester County Courthouse.

All other relief requested and not specifically mentioned herein is denied.

This constitutes the Order of this Court.

Dated: White Plains, New York
June 2, 2014



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