

<b>Matter of GEICO Gen. Ins. Co. v Grandoit</b>
2015 NY Slip Op 30305(U)
February 9, 2015
Supreme Court, Kings County
Docket Number: 508158/14
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 to Stay the Arbitration  
of GEICO GENERAL INSURANCE COMPANY,

Petitioner,

-against-

PATRICK GRANDOIT,

Respondent.

-and-

GEICO GENERAL INSURANCE COMPANY,

Proposed Additional Respondent.

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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 stay arbitration

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2015 MAR -3 AM 7:37  
KINGS COUNTY CLERK

Papers	Numbered
Order to Show Cause and Exhibits Annexed .....	<u>1-8</u>
Affirmation in Opposition and Exhibits Annexed .....	<u>9-21</u>
Reply Affirmation and Exhibits Annexed.....	<u>22-23</u>
Other: _____	_____

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner GEICO moves to stay the supplemental uninsured motorist arbitration demanded on the grounds that the respondent had his own auto insurance policy and thus this obviates the triggering of the supplemental uninsured motorist coverage

petitioner provides to its insured, his aunt, a person named Rachelle Archer, for her family members as defined by her insurance policy. Petitioner also asserts that they are entitled to a stay because respondent did not reside with its insured and therefore was not covered by the insurance coverage petitioner provides to Rachelle Archer. The respondent was a passenger in a livery cab at the time of the accident. The other vehicle, described in the police report as a tan van with Connecticut plates, left the scene of the accident before the police arrived.

Respondent claims, in opposition, that he was in fact residing with the insured and that the livery was uninsured, but avers that, most importantly, the petition was not made timely and cannot be entertained. As regards the petitioner's claim that he had his own auto insurance policy at the time of the accident, also with GEICO, he provides an affidavit (Exhibit H) solely addressed to the issue of whether he lives with Rachelle Archer. His attorney addresses this claim in his affirmation in opposition in the last paragraph, where he states that respondent cannot arbitrate with his own auto insurance as he only had comprehensive coverage and not uninsured motorist coverage. He annexes a copy of the declaration page of the respondent's GEICO policy as Exhibit K. From the face of it, it is clear that this policy was in effect on the date of the accident.

### **Timeliness**

The issue of whether an application to stay arbitration is "made" (CPLR 7503[c]) when the petition is filed, as opposed to when it is served, is a purely legal one. See *Branham v Loews Orpheum Cinemas, Inc.*, 31 AD3d 319, 323, 819 NYS2d 250 n 2 [1<sup>st</sup> Dept 2006], *affd* 8 NY3d 931, 866 NE2d 448, 834 NYS2d 503 [2007]). In fact, an application is made, as petitioner claims, when the petition is filed, and not, as

respondent claims, when it is served (see e.g. *Matter of Government Empls. Ins. Co. v Morris*, 83 AD3d 709, 710, 919 NYS2d 908 [2d Dept 2011]; *Matter of State Farm Mut. Auto. Ins. Co. v [Rickard]*, 250 AD2d 896, 897, 674 NYS2d 141 [3d Dept 1998]; CPLR 304[a]). Even though CPLR 7503(c) says, "An application to stay arbitration must be made by the party served [with a notice or demand for arbitration] within twenty days after *service* upon him of the notice or demand" (emphasis added), case law establishes that, when the notice or demand is mailed — as it was in the case at bar — "[t]he notice to arbitrate does not start the time to respond until receipt" *Matter of Knickerbocker Ins. Co. v [Gilbert]*, 28 NY2d 57, 64, 268 NE2d 758, 320 NYS2d 12 [1971] [emphasis added]). In *Matter of Travelers Prop. Cas. Co. of Am. v Archibald*, 2015 NY Slip Op 00465 (1<sup>st</sup> Dept), a recent case where the trial court held that the petition was untimely because it was not served within 20 days from the date that petitioner received the demand for arbitration, the Appellate Division reversed the trial court.

In this matter, the County Clerk's Minutes show that petitioner timely filed its petition on September 5, 2014, within 20 days of the date of the mailing of the demand for arbitration on August 18, 2014. The court takes judicial notice of this undisputed fact (see *Cato v City of New York*, 70 AD3d 471, 895 N.Y.S.2d 48 [1<sup>st</sup> Dept 2010]). Thus, it does not matter when petitioner received the demand, as it was timely without question. It is noted that the return receipt card is stamped "received" on August 20, 2014. Thus, petitioner had 20 days from this date to file its petition, and it did so.

### **Rachelle Archer's Policy**

Inexplicably, respondent had his attorney serve a demand for arbitration as regards his aunt's policy on August 18, 2014, despite having filed the same demand

with a different attorney in December of 2013, which resulted in a petition to stay arbitration filed in February of 2014 by petitioner GEICO and an order from a different judge of this court under Index No. 500884/14, dated December 18, 2014, which granted petitioner's petition to permanently stay arbitration as regards Rachelle Archer's policy on the grounds that he is not a resident relative of the insured. An EUO was held in June of 2014, and a copy of the transcript is annexed to the papers in opposition, but otherwise, most incredibly, the papers make no reference to this other petition. In that proceeding, the court sent the matter to a referee for a framed issue hearing as regards Twin City Fire Insurance Company's non-renewal or cancellation of the insurance policy for the host livery cab. The hearing is scheduled for February 26, 2015. This decision as regards the court's finding that Mr. Grandoit is not a resident relative is *res judicata* and binding on the undersigned. It is the law of the case. If respondent wanted to reargue the decision, it had to be done in that matter, not this one.

### **Respondent Grandoit's Policy**

Petitioner claims respondent had his own auto insurance on the date of this accident, with GEICO. Respondent's counsel agrees, and provides the declaration page, claiming that as uninsured motorist coverage is not listed thereon, he did not have any. This is an erroneous conclusion, as uninsured motorist coverage ("UM") in the statutory minimum amount, must be provided, by law since at least 1939, for every auto insurance policy issued in New York. See Insurance Law Section 3420(f); *Country Wide Ins. Co. v Dumawal*, 200 AD2d 353 (1<sup>st</sup> Dept 1994); *Matter of Geico Gen. Ins. Co. v A. Cent. Ins. Co.*, 34 Misc. 3d 1201(A). If the result of the framed issue hearing is that the livery cab did not in fact have valid insurance, it would seem that Mr. Grandoit may proceed to suit or to demand arbitration, as may be applicable, as against his own

uninsured motorist insurance coverage, unless he failed to meet a condition precedent in his policy, such as timely notice, if he so chooses. *Mahmood v Fid. & Guar. Ins. Co.*, 303 AD2d 385 (2<sup>nd</sup> Dept 2003).

**Conclusion**

Accordingly, the petition is granted in its entirety, and the arbitration demanded is permanently stayed.

This shall constitute the decision, order and judgment of the court.

Dated: Brooklyn, New York  
February 9, 2015

**ENTER :**



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

Hon. Debra Silber  
Justice Supreme Court

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