

Country-Wide Ins. Co. v Progressive Am. Ins. Co.

2015 NY Slip Op 30737(U)

May 6, 2015

Supreme Court, New York County

Docket Number: 650510/2015

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----x
In the Matter of the Application of

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

Index No. 650510/2015

-against-

DECISION/ORDER

PROGRESSIVE AMERICAN INSURANCE
COMPANY,

Respondent,

-----x
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>4</u>

Petitioner commenced the instant proceeding seeking an order pursuant to CPLR § 7511 vacating and/or modifying the arbitration award rendered on November 19, 2014 (the “Award”) based on unilateral mistake. Respondent cross-moves for an order confirming the Award. For the reasons set forth below, the petition is denied and respondent’s cross-motion is granted.

The relevant facts are as follows. This action arises from a motor vehicle accident that occurred on November 21, 2011, involving two vehicles and a pedestrian. The first vehicle was owned by New Storm Car Service, Inc. (“New Storm”) and left the scene after striking the pedestrian. The second vehicle was insured by respondent Progressive American Insurance

Company (“Progressive”) and allegedly struck the pedestrian after the New Storm vehicle. As a result of the accident, Progressive paid a total of \$22,513.29 in no-fault benefits to its insured. Progressive then commenced a priority of payment arbitration to recover fifty percent of its payment from petitioner Country-Wide Insurance Company (“Country-Wide”) as insurer for the New Storm vehicle. Country-Wide answered the arbitration and confirmed coverage for the New Storm vehicle. Indeed, no issues were raised regarding coverage, or lack thereof, for the New Storm vehicle.

On or about November 19, 2014, the arbitrator issued the Award finding that Country-Wide was responsible for fifty-percent of Progressive’s payments as insurer of the New Storm vehicle. Country-Wide now brings the instant petition to vacate/modify the Award contending that Progressive incorrectly named Country-Wide as the insurer for the New Storm vehicle when in fact, Country-Wide only insured the pedestrian, Michael Spence, who was involved in the accident.

It is well settled that the determinations of an arbitration panel are not to be lightly set aside and “judicial review of an arbitration proceeding is extremely limited.” *Frankel v. Sardis*, 76 A.D.3d 136, 139 (1st Dept 2010). Indeed, “[e]ven in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.” *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 (1999). Thus, pursuant to CPLR § 7510, “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” Section 7511(c) provides that:

The court shall modify the award if:

1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or
2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

In the present case, the petition to vacate and/or modify the Award is denied and the cross-petition to confirm the Award is granted as petitioner has failed to identify a proper ground to modify or vacate the Award. Petitioner alleges that the Award must be modified pursuant to CPLR § 7511(c) as it mistakenly names Country-Wide as the insurer for New Storm. However, the court finds this argument unpersuasive. Contrary to petitioner's assertion, the Award rightly lists Country-Wide as New Storm's insurer as Country-Wide admitted coverage for the New Storm vehicle in its answer to the arbitration. Thus, based on the record before the arbitrator, there is no mistake in the description of any person, thing or property referred to in the Award warranting its modification at this time. While Country-Wide itself may have made a mistake in the underlying arbitration by conceding coverage of an entity it did not actually insure, that is its own mistake and not one contemplated by CPLR § 7511(c).

Additionally, while petitioner relies on *Cox v. Lehman Bros, Inc.*, 15 A.D.3d 239 (1st Dept 2005), *Weissman v. Bondy & Schloss*, 230 A.D.2d 465 (1st Dept 1997) and *Broadway-111th St. Assoc. v. Morris*, 160 A.D.2d (1st Dept 1990) to argue that a unilateral mistake can be the basis for rescission, such reliance is misplaced as those cases are not on point. Those cases did not involve or discuss arbitration awards. Rather, those cases dealt with the proper standard to rescind a stipulation or other agreement. Thus, while petitioner correctly states the holdings of

those cases, such holdings are simply immaterial to the present action to modify an arbitration award.

Accordingly, based on the foregoing, the petition is denied and the cross-petition is granted. Settle Order and Judgment.

Dated: 5/6/15

Enter: PK

J.S.C.
CYNTHIA S. KERN
J.S.C.