

Matter of Farmington Gas. Co. v Felciano
2015 NY Slip Op 31200(U)
July 8, 2015
Supreme Court, New York County
Docket Number: 153402/15
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

FARMINGTON CASUALTY COMPANY,

Petitioner,

Index No. 153402/15

-against-

DECISION/ORDER

For an Order Staying the Uninsured Motorists
Arbitration Demanded by ALTAGRACIA FELICIANO
And BLASS FELICIANO,

Respondents,

-and-

GOVERNMENT EMPLOYEES INSURANCE
COMPANY and MARIBEL A. ROSADO,

Proposed Additional Respondents.

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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>
Affirmation in Opposition.....	<u>2,3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

Petitioner Farmington Casualty Company ("Farmington") moves for an Order (1)
pursuant to CPLR § 7503(b) permanently staying the arbitration demanded by respondents
Altagracia Feliciano and Blass Feliciano (hereinafter collectively referred to as "respondents");
or, in the alternative, (2) temporarily staying the arbitration pending a hearing, joining the
proposed additional respondents Government Employees Insurance Company ("GEICO") and

Maribel A. Rosado ("Rosado") to determine if insurance coverage existed for the vehicle at issue in the arbitration. Finally, in the event a stay is not otherwise granted, Farmington seeks to temporarily stay the arbitration so that it may obtain discovery from respondents. Farmington's motion is resolved to the extent set forth below.

The instant action arises from a motor vehicle accident that occurred on April 15, 2009 (the "Accident"). On said date, a vehicle insured by petitioner and in which respondents were passengers ("vehicle #2") collided with a vehicle owned and operated by proposed additional respondent Rosado and insured by proposed additional respondent GEICO ("vehicle #1"). Thereafter, on or about June 9, 2009, Rosado filed a claim with GEICO for coverage as a result of the Accident. By letter dated September 3, 2009, GEICO disclaimed any and all liability or obligation to Rosado under the policy "because of [Rosado's] failure to promptly notify [GEICO] of this loss, and [Rosado's] failure to cooperate with [GEICO] in the investigation and subsequent handling of this loss." Specifically, GEICO explained that all attempts to locate Rosado, via telephone, mail and in-person visits to verify the loss and Rosado's version of the Accident have been unsuccessful and that said lack of cooperation is a violation of the terms of the policy which requires that the insured cooperate and assist GEICO after notice of a claim is provided.

On or about March 18, 2015, respondents filed a demand for arbitration (the "Arbitration") seeking uninsured motorist benefits from petitioner for the Accident pursuant to the policy issued by petitioner. Specifically, in the demand for arbitration, respondents stated that the Accident was caused as a result of the negligence of an uninsured and/or unidentified motor vehicle. Farmington now moves for an Order (1) pursuant to CPLR § 7503(b)

permanently staying the Arbitration; or, in the alternative, (2) temporarily staying the Arbitration pending a hearing, joining GEICO and Rosado, to determine if insurance coverage existed for vehicle #1. Finally, in the event a stay is not otherwise granted, Farmington seeks to temporarily stay the arbitration so that it may obtain discovery from respondents.

An insurance carrier seeking to stay the arbitration of an uninsured motorist claim has the burden of demonstrating that the offending vehicle was actually insured at the time of the accident at issue. *Matter of Allstate Ins. Co. v. Holmes*, 173 A.D.2d 260 (1st Dept 1991). Indeed, once it is shown by a DMV registration record or a police report that a carrier issued a policy of insurance to a certain vehicle, the burden shifts to the carrier to demonstrate that it never issued a policy or that it properly cancelled the policy or validly disclaimed coverage. *See AutoOne Ins. Co. v. Hutchinson*, 71 A.D.3d 1011 (2d Dept 2010). Additionally, in order to be entitled to a hearing, the petitioner seeking to stay the arbitration has the "burden of establishing the existence of evidentiary facts, sufficient to conclude that there is a genuine preliminary issue which requires a trial and justifies a stay." *National Grange Mutual Ins. Co.*, 111 A.D.2d at 700. If issues of fact exist, the court must hold a hearing before it can decide whether the arbitration should proceed or be stayed. *See Country-Wide Ins. Co. v. Leff*, 78 A.D.2d 830 (1st Dept 1980). Where no issue of fact exists as to whether the offending vehicle was uninsured, no hearing is necessary and the stay will be denied. *See Application of Country-Wide Ins. Co. v. Manning*, 96 A.D.2d 471 (1st Dept 1983); *see also Application of Amica Mut. Ins. Co. v. Reaves*, 70 A.D.2d 811 (1st Dept 1979).

In the instant case, petitioner's application for a temporary stay of the Arbitration pending a framed issue hearing is granted as there are issues of fact as to whether GEICO validly

disclaimed coverage and thus, whether vehicle #1 was uninsured. Petitioner made a *prima facie* showing that vehicle #1 was insured by GEICO through the submission of a police accident report containing the vehicle's insurance code and a DMV report showing that GEICO was the insurer of the vehicle on the date of the Accident. In response, GEICO has submitted evidence that it disclaimed coverage for vehicle #1 based upon Rosado's failure to cooperate in the investigation of the Accident in violation of the policy terms. However, this court finds that a hearing must be conducted as this court cannot determine as a matter of law that GEICO's disclaimer of coverage was valid. It is well-settled that "since a disclaimer based upon lack of cooperation penalizes the injured party for the actions of the insured and 'frustrates the policy of this State that innocent victims of motor vehicle accidents be recompensed for the injuries inflicted upon them,' an insurer seeking to disclaim for noncooperation has a heavy burden of proof." *AutoOne Ins. Co.*, 71 A.D.3d at 1013. Indeed, "[t]o sustain its burden of establishing lack of cooperation, the insurer must demonstrate that 'it acted diligently in seeking to bring about the insured's cooperation...that the efforts employed by the insurer were reasonably calculated to obtain the insure[d]'s co-operation...and that the attitude of the insured, after his co-operation was sought, was one of 'willful and avowed obstruction.'" *Id.* (citing *Thrasher v. United States Liab. Ins. Co.*, 19 N.Y.2d 159, 168 (1967)).

Here, GEICO has failed to establish as a matter of law that it validly disclaimed coverage due to its insured's lack of cooperation. In support of its assertion that the disclaimer of coverage was proper, GEICO has provided the disclaimer letter it sent to Rosado which states that GEICO disclaimed coverage based on Rosado's failure to promptly notify GEICO of the loss and her failure to cooperate with GEICO in the investigation and subsequent handling of the loss. Specifically, the disclaimer letter states that GEICO made numerous attempts to contact

and/or locate Rosado by telephone calls, letters and by in-person visits but that Rosado never responded to GEICO's attempts. Additionally, it lists the dates on which GEICO attempted to contact Rosado. However, said evidence is insufficient to demonstrate as a matter of law that GEICO's disclaimer was proper as it is well-settled that a disclaimer letter, by itself, is insufficient to establish the validity of said disclaimer. *See Matter of Mercury Ins. Group v. Ocana*, 46 A.D.3d 561, 563 (2d Dept 2007) ("The disclaimer letter issued by [the insurer], while not establishing as a matter of law that [the insurer] validly disclaimed coverage due to a lack of a cooperation on the part of its insured, sufficed to raise factual questions as to the validity of the disclaimer which warrant a hearing"); *see also AutoOne Ins. Co.*, 71 A.D.3d 1011. Indeed, GEICO has failed to provide any evidence in addition to its disclaimer letter, such as an affidavit, affirming the steps it took to bring about Rosado's cooperation. As an issue of fact exists as to whether GEICO validly disclaimed coverage and thus, whether vehicle #1 was uninsured, a framed issue hearing is necessary to make a final determination on the issue of applicable insurance coverage in this matter.

Respondents' assertion that the petition should be denied in its entirety on the ground that it is untimely is without merit. Pursuant to CPLR § 7503(c), "[a]n application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded." Here, it is undisputed that petitioner received respondents' demand for arbitration on March 23, 2015 and that petitioner filed the instant petition to stay the Arbitration within twenty days of that date, on April 7, 2015. Thus, this court finds that the instant petition is timely.

Finally, in the event this court determines that respondents have a valid uninsured motorist claim, the petitioner is entitled to authorizations for respondents' no-fault files, all

