

Matter of State Farm Ins. Co. v White
2015 NY Slip Op 31476(U)
August 3, 2015
Supreme Court, New York County
Docket Number: 155649/15
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

STATE FARM INSURANCE COMPANY,

Petitioner,

Index No. 155649/15

-against-

DECISION/ORDER

NICKIE WHITE, JR.,

Respondent.

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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>
Affirmations in Opposition	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner State Farm Insurance Company moves for an Order pursuant to CPLR § 7503 (c) temporarily staying the uninsured motorist arbitration initiated by respondent Nickie White, Jr. on the ground that there exist issues of fact as to whether respondent is covered under the policy; or, in the alternative, in the event a stay is not granted, petitioner seeks to temporarily stay the arbitration so that it may obtain discovery from respondent. The petition is resolved as set forth below.

The relevant facts are as follows. On or around May 28, 2015, respondent demanded arbitration of an uninsured (hit-and-run) motorist claim on his behalf under a policy of insurance issued to Nickie S. White (the "Policy") by petitioner arising out of an alleged accident which

occurred on October 24, 2014 in New York, New York (the “arbitration”). Specifically, respondent claimed that on that date, he was a pedestrian when he was involved in an accident with a hit-and-run vehicle and that he sustained injuries (the “accident”). Petitioner now seeks to temporarily stay the arbitration on the grounds that (1) respondent does not qualify as an insured as defined in the Policy because he did not reside with the named insured on the date of the accident; (2) there was no “accident” or “physical contact” as required under the Policy; and (3) respondent failed to notify the police within 24 hours of the incident or as soon as reasonably possible as required by the Policy. In the event a stay is not granted, petitioner seeks to temporarily stay the arbitration so that it may obtain discovery from respondent.

“The party seeking a stay of arbitration has the burden of showing the existence of evidentiary facts to establish a preliminary issue which would justify the stay.” *Matter of Hertz Corp. v. Holmes*, 106 A.D.3d 1001, 1002-1003 (2d Dept 2013). If issues of fact exist, the court must temporarily stay the arbitration and hold a hearing before it can decide whether the arbitration should proceed or be permanently stayed. *See also Country-Wide Ins. Co. v Leff*, 78 A.D.2d 830 (1st Dept 1980).

In the instant action, petitioner’s application for an Order temporarily staying the arbitration is granted. As an initial matter, petitioner has established that there exists an issue of fact as to whether respondent is an insured under the Policy on the ground that he does not reside in the household with the name insured. Pursuant to the Supplementary Uninsured/Underinsured Motorists (“SUM”) Endorsement to the Policy, an “insured” is defined as, *inter alia*, “the named insured and, while residents of the same household, [the named insured’s] spouse and the relatives of either [the named insured] or [the named insured’s]

spouse.” The Policy’s named insured is Nickie S. White, respondent’s father, who resided at 50 West 112th Street, Apt. 1H, New York, NY on the date of the accident. Thus, in order to qualify as an insured under the SUM Endorsement, respondent must have been a resident of Nickie S. White’s household on the date of the accident. Petitioner asserts that respondent did not reside in the same household as the named insured on the date of the accident and thus, he is not an “insured” under the Policy. In support of this assertion, petitioner provides respondent’s Application for Motor Vehicle No-Fault Benefits in which he listed his address on the date of the accident as 640 Lafayette Avenue, Brooklyn, NY. Additionally, petitioner provides a New York Department of Motor Vehicles Record Expansion for respondent which shows that respondent’s address is 540 East 183rd Street, B4, Bronx, NY 10458. In response, respondent affirms that he lived at the 50 West 112th Street address on the date of the accident with his father, the named insured, and that he was only temporarily staying at the 640 Lafayette Avenue address because that was the shelter in which his girlfriend lived. Additionally, he affirms that the 540 East 183rd Street address is his mother’s address and that he did not reside with her on the date of the accident. Rather, he affirms that he used that address to obtain a driver’s permit because he did not have the required identification establishing his actual residence and so he was accompanied to the Department of Motor Vehicles with his mother, who had the necessary identification for the Bronx address. Thus, an issue of fact exists as to whether respondent is an insured under the Policy.

Additionally, petitioner has established that there exists an issue of fact as to whether there was in fact an “accident” and “physical contact” as required by the Policy. Pursuant to the SUM Endorsement to the Policy, the insurer

will pay all sums that the insured...shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by an accident arising out of such uninsured motor vehicle's ownership, maintenance or use....

Further, the SUM Endorsement to the Policy defines "uninsured motor vehicle" as

a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

- (2) neither owner nor driver can be identified (including a hit-and-run vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident....

Petitioner asserts that no "accident" or "physical contact" occurred which would require respondent's claims to go to arbitration. In support of said assertion, petitioner relies on the records from Harlem Hospital, where respondent was brought after the accident, which state that "Pt is a 20yo previously healthy male who presents with head lac from unclear injury. Pt initially state he was sliced with a knife then later stated he was hit by a car and fell and hit his head...He is unable to state where the car struck him." Petitioner further relies on the fact that although there is a police accident report, it undisputed that the police were not called to the scene of the accident and the police accident report is undated. In response, respondent has affirmed that he was in fact hit by a hit-and-run motor vehicle and that he only told the medical personnel at the hospital that he was sliced with a knife because he "thought [he] would get into a room at the emergency room faster for treatment...if [he] told them [he] had been cut with a knife" but that "[that] was not the truth." Thus, an issue of fact exists as to whether respondent's injuries are covered under the Policy.

Petitioner has also established that there exists an issue of fact as to whether respondent notified the police within 24 hours of the accident or as soon as reasonably possible as required by the Policy. Pursuant the SUM Endorsement to the Policy, “the insured or someone on the insured’s behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or the Commissioner of Motor Vehicles....” Indeed, it is well-settled that failure to report a hit-and-run accident to the police “within 24 hours or as soon as reasonably possible” precludes recovery of uninsured motorist benefits. *Aetna Cas. & Sur. Co. v. Loy*, 108 A.D.2d 709 (1st Dept 1985). It is undisputed that the police were not called to the scene of the accident. Further, petitioner asserts that the police accident report is undated so it is unknown when the alleged accident was actually reported to the police. In response, respondent affirms that “[a]fter being released from the hospital and within 24 hours of the accident, [he] went to the 28th Precinct and reported the accident” and that the “report was taken by a police officer.” Thus, an issue of fact exists as to whether respondent timely notified the police as required by the Policy.

Additionally, in the event this court determines that this is a valid uninsured motorist claim, the petitioner is entitled to have the respondent comply with pre-arbitration discovery requests at that time. Accordingly, it is hereby

ORDERED that the arbitration herein be temporarily stayed pending the outcome of a framed issue hearing; and it is further

ORDERED that this matter be set down for a framed issue hearing before this court in Part 55 on August 18, 2015 at 11:00 a.m. to determine whether respondent is an insured under the Policy; whether there was an “accident” and “physical contact” pursuant to the Policy; and

whether respondent timely notified the police about the accident as required by the Policy. This constitutes the decision and order of the court.

Dated: 8/3/15

Enter: PK
J.S.C.

CYNTHIA S. KERN
J.S.C.