

American Transit Ins. Co. v Singh

2016 NY Slip Op 30705(U)

April 11, 2016

Supreme Court, Kings County

Docket Number: 500711/14

Judge: Debra Silber

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.

At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of April, 2016.

P R E S E N T:

HON. DEBRA SILBER,

Justice.

----- X

In the Matter of the Arbitration to be had
Between AMERICAN TRANSIT INSURANCE
COMPANY,

Petitioner,

DECISION, ORDER
AND JUDGMENT

- against -

Index No. 500711/14

STEFAN B. SINGH and DERRON K. A. FRASER,

Respondents,

U-HAUL TITLING, LLC, MANFRED BOAZ CADET
and REPWEST INSURANCE COMPANY,

Additional Respondents.

----- X

The following papers numbered 1 to 6 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

1-4 _____

Opposing Affidavits (Affirmations) _____

5 _____

Reply Affidavits (Affirmations) _____

6 _____

Upon the foregoing papers in this matter , additional respondents, U-Haul Titling, LLC (UHT, incorrectly sued herein as U-Haul) and Repwest Insurance Company (Repwest), move, by order to show cause (OSC), for an order, pursuant to CPLR 2201, staying the

framed-issue hearing, previously directed herein, until a final determination has been reached in the related declaratory judgment action commenced by UHT, the vehicle owner, U-Haul Co. of New York and Vermont, Inc. (U-Haul), the vehicle supplier, and by Repwest, UHT and U-Haul's insurer, entitled, *Repwest Insur. Co., et al. v Cadet, et al.*, which was pending in the Supreme Court, Kings County under Index No. 510369/15 (DJ Action) before the Hon. Edgar G. Walker.

Background

Demand For Arbitration

Following an automobile collision between a U-Haul vehicle and a taxi on February 16, 2013 (2013 Collision), two allegedly injured taxi passengers, respondents Stefan B. Singh (Singh) and Derron K A Fraser (Fraser), served a demand for arbitration upon petitioner American Transit Insurance Company (American Transit), the insurance company for the livery taxi that was rear-ended, after UHT and U-Haul's insurance company, Repwest, disclaimed coverage on the ground that the 2013 Collision was intentionally staged. The instant special proceeding to stay arbitration ensued (Motion Sequence [Mot. Seq.] No. 1).

The Framed-Issue Hearing

This court issued an October 3, 2014 decision and order (2014 Order) which (1) added UHT, Repwest and Cadet (previously incorrectly identified in the caption herein as Boaz Cadet Manfred) as additional respondents (additional respondents), (2) temporarily stayed the arbitration, and (3) referred the matter to a special referee for a framed-issue hearing to determine whether Cadet was insured by Repwest or UHT at the time of the 2013 Collision

or if he had his own vehicle insurance policy for the rental period. A July 20, 2015 short form order denied UHT and Repwest's reargument and renewal motions (Mot. Seq. No. 2).

The DJ Action

Meanwhile, on August 21, 2015, before the framed-issue hearing, Repwest, UHT and U-Haul commenced the DJ Action against Cadet, Singh, Fraser and Alex Dvorkin (Dvorkin), the livery car driver, seeking a declaration that the 2013 Collision was staged and therefore, an "uncovered event" based on defendants' fraudulent scheme and violation of the terms of the U-Haul rental contract.

Additional Respondents' OSC

The additional respondents then obtained a September 11, 2015 OSC (Mot. Seq. No. 3) seeking to stay the matter herein until the outcome of the DJ Action before Justice Walker. That OSC included a stay of the underlying matter pending the hearing of the OSC. The court's November 5, 2015 interim order stayed the matter including the framed-issue hearing pending a decision and order on the OSC.

Discussion

Additional respondents' OSC is now rendered moot because a final determination was reached in the DJ Action while this OSC was pending. As the 1/15/16 decision by Justice Walker in the DJ Action determined that this collision was not covered by UHT, U-Haul or Repwest, UHT and U-Haul's insurer, as it was "intentionally staged," the court finds Justice Walker's decision to result in collateral estoppel as to this matter in all respects, including

as to Cadet's own insurance policy as well as to the underlying proceeding referenced in Motion Sequence No. 1. Accordingly, it is hereby

ORDERED that additional respondents' OSC (Mot. Seq. No. 3) seeking an order, pursuant to CPLR 2201, staying the framed-issue hearing in this special proceeding until a final determination has been reached on their DJ Action is now academic; and it is further

ORDERED AND ADJUDGED that the underlying petition (Mot. Seq. No. 1) herein for an order permanently staying the arbitration requested by Singh and Fraser is granted.

This constitutes the decision, order and judgment of the court.

E N T E R,

ds

Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court

Nancy T. Sunshine

**NANCY T. SUNSHINE
Clerk**

lee
**2016 APR 14 AM 9:42
KINGS COUNTY CLERK
FILED**