

Matter of Elco Admin. Servs. v Fields

2016 NY Slip Op 33040(U)

June 19, 2016

Supreme Court, Cortland County

Docket Number: EF15-636

Judge: Phillip R. Rumsey

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At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District at the Cortland County Courthouse, in the City of Cortland, New York on the 5th day of February, 2016.

PRESENT: HON. PHILLIP R. RUMSEY
JUSTICE PRESIDING.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CORTLAND

In the Matter of the Application of
ELCO ADMINISTRATIVE SERVICES to Stay the
Arbitration sought to be had by,

Petitioner,

-against-

EDDIE FIELDS,

Respondent,

-against-

**TAYLOR C. JENNISON, ANNEMARIE VANDEE,
PREFERRED MUTUAL INSURANCE COMPANY,
NEW SOUTH INSURANCE COMPANY, MICHELE
PIZZOLA, TRAVELERS HOME AND MARINE
INSURANCE COMPANY, KEAGAN THOMAS
BROWN and GEICO GENERAL INSURANCE
COMPANY,**

**DECISION, ORDER
AND JUDGMENT**

Index No. EF15-636
RJI No. 2015-0422-M

Proposed Additional
Respondents.

APPEARANCES:

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PHILLIP R. RUMSEY, J. S. C.

This proceeding arises from a four-vehicle accident that occurred on December 2, 2014. According to the police accident report, the collision was caused when the operator of a vehicle owned by Annmarie Vandee – a 2005 Ford – failed to observe slowing or stopped traffic and struck the Pizzola vehicle, pushing it into a vehicle owned by EAN Holdings, LLC and operated by Eddie Fields, which, in turn, struck the Brown vehicle. EAN Holdings, LLC is self-insured, and Fields made a demand for uninsured motorist arbitration, alleging that the Vandee vehicle was uninsured. Petitioner, the third-party administrator for EAN, commenced this proceeding seeking a permanent stay of arbitration, alleging that the Vandee vehicle was insured on the date of the accident by Preferred Mutual Insurance Company (Preferred) and also by New South Insurance Company (New South). Preferred made a motion seeking (1) a declaration that its policy insuring the Vandee vehicle was terminated prior to the accident and (2) that it be dismissed from the proceeding.

The Vandee vehicle was insured by a policy issued by Preferred for the period from August 20, 2006 to August 20, 2007. Although records of the New York State Department of Motor Vehicles (DMV) show Preferred as the current insurer of the Vandee vehicle, the record in this proceeding establishes that New South issued a policy insuring the same vehicle with a policy period commencing July 31, 2014. Accordingly, Preferred's policy was terminated prior to the accident, at the latest on July 31, 2014, notwithstanding the erroneous DMV record identifying Preferred as the current insurer (see Vehicle and Traffic Law § 313 [1] [a] ["if another insurance contract has been procured, such other insurance contract shall, as of its effective date and hour, terminate the insurance previously in effect with respect to any motor

vehicles designated in both policies”]).

As noted, New South issued a policy insuring the vehicle for the period commencing July 31, 2014; however, it made a prima facie showing that the policy was properly terminated in accordance with Vehicle and Traffic Law § 313 by (1) timely mailing of the required notice to the named insured, Trevor Vandee and (2) timely filing of the required notice with the DMV on December 1, 2014. Petitioner asserts, however, that the policy was not properly terminated because notice of termination was not mailed to Annmarie Vandee, the owner of the insured vehicle.

Vehicle and Traffic Law § 313 requires that notice of termination be given by mail only to “the named insured at the address shown on the policy.” The record shows that the New South policy: (1) lists only Trevor Vandee as a named insured; (2) insures two vehicles, a 2004 Ford for which Trevor Vandee is identified as the primary driver, and the 2005 Ford involved in the accident, for which Annmarie Vandee is identified as the primary driver; (3) shows that Trevor Vandee and Annmarie Vandee are married and reside at the address where the notice was mailed. Notably, the New South policy defines “you” and “your” to include the named insured shown on the declaration page and the “spouse if a resident of the same household.” A single termination notice sent to married individuals who occupy the same dwelling is sufficient (see Allstate Ins. Co. v Prudential Prop. & Cas. Ins. Co., 117 AD2d 236 [1986], lv denied 68 NY2d 612 [1986]; see also Drysdale v Meritplan Ins. Co., 94 AD2d 970 [1983]). Thus, the New South policy was properly terminated prior to the accident at issue.

Petitioner’s assertion that Fields improperly named it as the respondent in his arbitration demand because it is “merely the third-party administrator of non-party EAN Holdings, LLC”

is unavailing (Petition dated October 7, 2015, ¶ 4; see also Affirmation of Stephanie L. Boden dated October 7, 2015 [Boden Affirmation], ¶ 9). Notably, Fields’s arbitration notice specifically names as respondent “ELCO Administrative Services as Third Party Administrator for EAN Holdings, LLC,” and clearly indicates that the claim is asserted against “Self Insured EAN Holdings, LLC” (see Boden Affirmation, Exhibit I [Request for UM Arbitration dated June 22, 2015]).

Petitioner also seeks, in the alternative, a temporary stay of arbitration pending completion of discovery from Fields. Petitioner’s counsel alleges that it served discovery demands on Fields that are dated October 7, 2015, approximately three and one-half months after the demand for arbitration was made and two days before this proceeding was commenced, and there is nothing indicating that Fields has complied. Under such circumstances, petitioner is entitled to completion of discovery from Fields prior to arbitration of the uninsured motorist claim (see Matter of Government Empls. Ins. Co. v Mendoza, 69 AD3d 623 [2010]).

Based on the foregoing:

1. Preferred’s motion is granted. It is hereby declared that Preferred’s policy was terminated prior to the accident that occurred on December 2, 2014, this proceeding is dismissed against Preferred, and the caption is hereby amended accordingly.

2. The petition is granted, to the limited extent of ordering that arbitration is temporarily stayed, until Fields complies with the outstanding discovery demands attached as Exhibit J to the Boden Affirmation, and is otherwise denied.

This decision constitutes the order and judgment of the court. Electronic filing of this decision, order and judgment by the court does not constitute notice of entry (see CPLR 5513;

Uniform Rules for Trial Cts [22 NYCRR] § 202.5-b [h] [3]).

Dated: June 19, 2016
Cortland, New York

Phillip R.
Rumsey

Digitally signed by Phillip R.
Rumsey
DN: cn=Phillip R. Rumsey, o.ou,
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c=US
Date: 2016.06.19 13:16:17 -0400

HON. PHILLIP R. RUMSEY
Supreme Court Justice

ENTER

The following documents were filed with the Clerk of the County of Cortland:

- Notice of petition dated October 7, 2015.
- Petition dated October 7, 2015.
- Affirmation of Stephanie L. Boden dated October 7, 2015, with Exhibits A – K.
- Affirmation of Fred Lutzen dated December 4, 2015.
- Notice of motion dated December 18, 2015.
- Affirmation of Joseph M. Schnitter, Esq. dated December 18, 2015.
- Affidavit of David H. Starkweather, sworn to December 15, 2015, with Exhibits A – E.
- Affidavit of Dorothy Barry, sworn to December 15, 2015, with Exhibit A.
- Affirmation in opposition to Preferred’s motion to dismiss by Brian R. Berger dated January 6, 2016.
- Affirmation in response to Geico’s opposition by Brian R. Berger dated January 6, 2016.
- Affirmation in opposition by Barry L. Manus dated January 6, 2016, and affidavit of Sharon Dowell, sworn to January 4, 2016, with Exhibits A – C.
- Reply affirmation of Joseph M. Schnitter, Esq. dated February 2, 2016.
- Affirmation in reply in response to New South Insurance Company’s opposition by Brian R. Berger dated February 3, 2016, with Exhibit A.
- Original Decision, Order and Judgment dated June 19, 2016.