

**Matter of Geico Indem. Co. v Gomez**

2017 NY Slip Op 30804(U)

March 7, 2017

Supreme Court, Richmond County

Docket Number: 85004/17

Judge: Kim Dollard

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

-----X DCM Part 4  
In the Matter of Application of  
GEICO INDEMNITY COMPANY,  
Petitioner,  
Present:  
Hon. Kim Dollard

-against- DECISION AND ORDER

To Stay Arbitration Demanded by  
BENITO GOMEZ,  
Respondent,  
Index No: 85004/17  
Motion No: 001 & 002

and SAFECO INSURANCE and NICHOLAS DECREENZA,

Proposed Additional Respondents,

-----X

The following papers numbered 1, 2, 3 and 4 on this \_\_\_ day of \_\_\_\_, 2017:

**Papers Numbered**

Petitioners Notice of Petition, Petition and Affidavit in Support .....	1
Respondent's Notice of Cross-Motion and Affidavit in Support of Cross-Motion .....	2
Petitioner's Affidavit in Opposition and Reply Affidavit .....	3
Respondent's Reply Affidavit .....	4

Upon the foregoing papers, the motion by Petitioner, Geico Indemnity Company, to permanently stay arbitration of respondent, Benito Gomez; for a temporary stay of the uninsured motorist arbitration and setting the matter down for a framed hearing as to the involvement of Nicholas Decrenza; for an Order joining Nicholas Decrenza and Safeco Insurance as additional respondents; for a ruling that the maximum amount recoverable by respondent is \$25,000; and permitting the petitioner pre-arbitration discovery is denied; the Respondent's cross-motion to dismiss the petition on the ground that the proceeding was not timely commenced is granted.

This proceeding stems from a hit and run accident occurring on December 16, 2015, wherein Benito Gomez claims to have been struck by an unknown vehicle with New York license plate number GTW1793 while on West 57<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues in New York City.

The owner of the vehicle with New York license plate number GTW1793 is stated to be Nicholas Decrenza who is insured by Safeco Insurance Company.

On January 14, 2016, respondent's counsel sent correspondence to petitioner, Geico General Insurance Company, which made a claim for, among other things, supplementary uninsured motorist benefits (SUM) and basic uninsured motorist benefits. Together with this correspondence, which was sent certified mail, return receipt requested, the respondent also included a "Notice of Intention to Make Claim and Arbitrate". While the covering letter had an incorrect claim number, the Notice of Intention to Make a Claim and Arbitrate contained the correct claim number. The Notice contained the warning that unless within twenty (20) days after receipt of this notice, petitioner applied for a stay of arbitration, then petitioner would be precluded from objecting that a valid agreement was not made or complied with and from asserting in court the bar of a limitation of time.

The petitioner did not move to stay arbitration within twenty days from receipt of this Intention to Arbitrate which it received on January 19, 2016 according to the post office receipt.

On March 7, 2016, Safeco Insurance Company wrote to the respondent's attorney, advising that their investigation revealed that their insured's vehicle was not involved in the accident and therefore coverage was being denied.

On or about December 19, 2016, the respondent served upon petitioner a Request for Arbitration with the American Arbitration Association. Petitioner states that it was received on December 21, 2016 and that therefore its motion dated January 6, 2017 to stay arbitration is timely.

CPLR §7503, subdivision c, provides that an application to stay arbitration must be made within 20 days after service of a demand for arbitration or notice of intention to arbitrate.

If a motion to stay arbitration is not made within twenty (20) days after service of a Notice of Intent to Arbitrate that is properly sent by certified mail, return receipt requested, the proceeding is time barred.

Where a notice of intent to arbitrate is sent, followed by a demand or request for arbitration, the twenty (20) day time limit runs from receipt of the first notice of intention to arbitrate or demand to arbitrate (In the Matter of Allstate Insurance Company v. Raynor, 78 A.D.3d 1173, 911 N.Y.S.2d 661, 2<sup>nd</sup> Dept., 2010).

The statutory requirement that a petition to stay arbitration must be brought within twenty (20) days of service of a notice of intent to arbitrate is strictly enforced and a court has no jurisdiction to entertain an untimely application (CPLR §7503 ( c ); In the Matter of State Farm Mutual Automobile Insurance Co. V. Scudero, 33 A.D.3d 927, 824 N.Y.S.2d 300, 2<sup>nd</sup> Dept., 2006).

Therefore, having failed to move within twenty (20) days of service of the respondent's initial Notice of Intention to Make a Claim and Arbitrate received on January 19, 2016, the petitioner's application to stay arbitration is time barred.

Further, the initial notice of intention to arbitrate was not deceptive or intended to prevent timely commencement of the proceeding. The notice to arbitrate contained the correct policy number and complied with the requirements or the rules regarding notice of intention to arbitrate. Additionally, the petitioner failed to proffer an affidavit from a witness with knowledge supporting its claim that the alleged deceptive practices of the respondent prevented petitioner from timely moving to stay arbitration (In the Matter of Progressive Casualty Insurance Co. v. Garcia, 140 A.D.3d 886, 33 N.Y.S.3d 385, 2<sup>nd</sup> Dept., 2016).

With respect to the remaining issues addressed in the petition, the failure to move to stay arbitration within the applicable twenty (20) day time period is a bar to judicial intrusion into the arbitration process (State Farm Mutual Automobile Insurance v. Urban, 78 A.D.3d 1064, 912 N.Y.S.2d 586, 2<sup>nd</sup> Dept., 2010). Therefore, the remaining issues, including the policy amount and petitioner's entitlement to discovery are properly addressed in the arbitration proceeding.

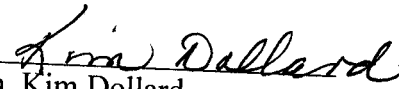
Accordingly, it is

**ORDERED** that the respondent's motion is denied; and is further

**ORDERED**, that the respondent's cross-motion to dismiss the petition to stay arbitration as untimely is granted.

Dated: March 7, 2017

ENTER,

  
\_\_\_\_\_  
Hon. Kim Dollard  
Acting Justice Supreme Court