At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of January, 2019

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

Index No.: 504739/2018

-against-

Decision and Order

LLOYD CORNISH, KAREIFF MCDUFFIE and TEARIA EVANS,

Respondents,

-and-

PROGRESSIVE SPECIALTY INSURANCE COMPANY, WOODLEY GATSON, TERRE WILLIAMS and ROBIN SHAPIRO,

Proposed Additional Respondents,

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The following *papers* numbered 1 to 3 read on this motion:

Papers	Numbered
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	1
Opposing Affidavits (Affirmations)	2
Reply Affidavits (Affirmations)	3

After oral argument and a review of the submissions herein, the Court finds as

MS #2

follows:

Petitioner, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, moves for an order (1) granting leave to reargue its petition to stay arbitration, which was denied pursuant to order of this Court dated July 11, 2018 and upon reargument, granting an order permanently staying uninsured motorist arbitration among other alternative reliefs. Respondents opposes the same.

ARGUMENTS

Petitioner contends the courts order of July 11, 2018 misapprehended or overlooked the facts or law in the prior proceeding, alleging that said order indicates that the sole reason for denying petitioners petition to stay arbitration was due to the Court's finding of "no liability" on the Progressive insured vehicle.

Respondent contends the court should deny this motion because petitioner failed to show what the Court got wrong in its analysis of the laws herein. Moreover, respondent contends petitioner is mischaracterizing the Courts order.

ANALYSIS

CPLR 2221 in pertinent part states: "(d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. CPLR 2221(d)(2) articulates the standards previously outlined in the caselaw. A motion to reargue, it says: "shall be based upon matters of fact or law allegedly

overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. CPLR 2221.

Under the caselaw existing prior to the 1999 amendments, a motion for re-argument was often used when there was a change in the law after the prior order. CPLR 2221(e)(2) now clarifies that the motion to renew, not the motion to reargue, is the proper expedient when the motion is based on a change in the law that occurs while the case is still subjudice, such as a new statute taking effect or a definitive ruling on a relevant point of law being handed down by an appellate court that is entitled to stare decisis. See *Siegel, New York Practice* 449 (4th ed. 2005). The distinction, made clear in the caselaw and now embodied in the statute, is that the motion to renew involves new proof while the motion to reargue does not; it merely seeks to convince the court that it overlooked or misapprehended something the first time around and ought to change its mind. NY CPLR 2221. Additionally, A court has inherent discretionary power to vacate an order or judgment in the interests of substantial justice. *See Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 760 NYS2d 727, 790 NE2d 1156 (2003).

In the present case, Petitioner contends that in deciding the previous motion in respondents' favor, the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law. The Court can find nothing in petitioner's renewal which indicates that the Court overlooked or misapprehended relevant facts. Petitioner fails to set forth any facts that the Court overlooked, however, but contend apparently that the Court misapplied controlling principles of law in regard to denying its petitioner to stay arbitration. The Court disagrees.

The Court's July 11, 2018 Order states;

"After oral argument: Petitioners motion to stay arbitration is denied. Petitioners application to add proposed additional respondents is denied, based upon no liability. Petitioner and respondents are to proceed to arbitration. Respondent will supply HIPPA authorizations by August 11, 2018."

It is abundantly clear from the order that the basis for denying petitioners application to add proposed respondents was denied based on no liability, not that the motion to stay arbitration.

Pursuant to CPLR 7503 (c) "Notice of intention to arbitrate. A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. ... An 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. Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or the notice of intention to arbitrate. Service

of the application by mail shall be timely if such application is posted within the prescribed period." CPLR 7503 (McKinney) Moreover, to alleviate any further confusion the motion to stay arbitration was denied based on the application to stay arbitration being untimely. In the present case respondents sent by c certified mail, return receipt requested a notice of intent to arbitrate on December 20, 2017. Petitioner received said notice on December 29, 2017. Petitioner filed the petition to stay arbitration on March 8, 2018, well beyond the twenty (20) day rule.

Accordingly, defendant's request to reargue is granted and upon reargument this Court adheres to its previous decision for the reasons stated above.

This constitutes the Decision/Order of the Court.

Date: January 8, 2019

RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

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KINGS COUNTY CLERK
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