

Matter of Government Empl. Ins. Co. v Monaco

2019 NY Slip Op 30484(U)

January 18, 2019

Supreme Court, Richmond County

Docket Number: 85106/2018

Judge: Wayne M. Ozzi

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X **PART 23**

**In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE
COMPANY, to Stay Arbitration,**

Present:

Petitioner,

Hon. Wayne M. Ozzi

-against-

DECISION AND ORDER

ADRIANA MONACO,

Index No. 85106/2018

Respondent,

Motion No. 001, 002, 003

-and-

NEW YORK CITY TRANSIT AUTHORITY,

Proposed Additional Respondent.

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The following papers numbered 1 to 8 were marked fully submitted on November 8, 2018:

	Numbered
Notice of Petition and Petition to Stay Arbitration with exhibits attached (Motion Seq. 001) (dated May 14, 2018)	1
Notice of Cross-Petition, Petition, and Affirmation in Support to Stay Arbitration with exhibits attached (Motion Seq. 002) (dated June 26, 2018)	2
Amended Notice of Cross-Petition to Stay Arbitration and Affirmation in Support with exhibits attached (Motion Seq. 002) (dated June 26, 2018)	3
Notice of Amended Petition and Amended Petition with exhibits attached (Motion Seq. 003) (dated July 9, 2018)	4
Affirmation in Opposition to Motion Sequence 001 and 003 with exhibits attached (dated September 18, 2018)	5

Affirmation in Opposition to Motion Sequence 002 and the Amended Notice of Petition with exhibits attached (dated September 18, 2018) 6

Affirmation in Reply with exhibits attached (Motion Sequence 001 and 003) (dated September 19, 2018) 7

Affirmation in Reply (Motion Sequence 002) (dated November 2, 2018) 8

Petitioner¹, Government Employees Insurance Company (hereinafter “GEICO”), and proposed additional respondent New York City Transit Authority (hereinafter “NYCTA”), petition and cross-petition, respectively, for an order permanently staying the arbitration demanded by respondent Adriana Monaco (hereinafter “Monaco”). The petition and cross-petition are granted and the arbitration sought by Monaco is permanently stayed.

FACTS

Monaco allegedly suffered personal injuries as a result of a two-vehicle accident occurring on June 6, 2011, between a NYCTA bus in which she was a passenger, and an unidentified motor vehicle which ultimately fled the scene. According to Monaco’s September 20, 2011 “Notice of Intention to Make Claim:” “[i]t was discovered at the 50-h hearing held on September 20, 2011 [that] the other vehicle involved in this action fled the scene of the accident as per the detailed investigation shared with the plaintiff’s counsel at said hearing.” Monaco commenced a personal injury action in Supreme Court, Kings County under Index Number 25829/2011 against the NYCTA, the Metropolitan Transportation Authority, the bus operator, and John Doe (hereinafter

¹ Petitioner filed a petition designated motion sequence 001 and an amended petition designated as motion sequence 003 each seeking to permanently stay the arbitration sought by Monaco.

“Kings County Action”).² Her November 11, 2011 complaint defined John Doe as the unknown operator of a motor vehicle struck by the NYCTA bus. On April 12, 2018 a Kings County jury returned a verdict in favor of defendants on the issues of liability and damages associated with Monaco’s alleged injuries. No insurance coverage issues were part of the personal injury action.

In a further effort to recoup monetary damages, Monaco served her insurer, GEICO, with a Demand for Uninsured Motorist Arbitration on April 26, 2018, followed by a Demand for Arbitration to the NYCTA dated June 8, 2018.

GEICO and NYCTA move for an order permanently staying arbitration, arguing the expiration of the statute of limitations, and in GEICO’s case, Monaco’s failure to exhaust uninsured motorist benefits under the self-insured NYCTA.

DISCUSSION

The statute of limitations to serve a demand for arbitration for uninsured motorist benefits runs from the date of the accident, or from the time when subsequent events render the offending vehicle uninsured (*see New York City Tr. Auth. v Hill*, 107 AD3d 897 [2d Dept 2013]). Two separate statute of limitations periods apply in this case. The Court of Appeals held the three-year statute of limitations set forth in CPLR § 214(2) applies to no-fault claims against a self-insurer like NYCTA because the benefit springs from a statute, while a six-year statute of limitations applies to no-fault benefits provided by an insurance company because they are provided through a contractual obligation to the insured (*see Contact Chiropractic, P.C. v New York City Tr. Auth.*, 31 NY3d 187 [2018]).

² Monaco’s action in Supreme Court, Kings County bore the caption *Monaco v. New York City Transit Authority, Metropolitan Transportation Authority, Michael Fragapane, and “John Doe,” said name being fictitious and unknown at this time.*

The parties do not dispute the accident giving rise to Monaco’s alleged personal injuries occurred on June 6, 2011. Similarly, all parties agree Monaco did not demand uninsured motorist benefits until 2018, some seven years after the accident. The burden, therefore, shifts to Monaco to come forward with evidence of an accrual date later than the date of the accident (*see New York City Tr. Auth. v Hill*, 107 AD3d 897, [2d Dept 2013], *Progressive Northeastern Ins. Co. v Rogers*, 90 AD3d 666 [2d Dept 2011]).

Monaco argues the accrual date should be April 12, 2018, the date on which the jury returned its verdict in the Kings County Action. Monaco reasons the verdict date judicially determined the issue of insurance coverage.

The Kings County personal injury action did not, and could not resolve the issues relating to insurance coverage; it determined issues of liability and damages. Indeed, the evidence before this Court shows that Monaco and respondent’s attorney, knew the “John Doe” vehicle fled the scene and that NYCTA conducted a “detailed investigation” on September 20, 2011. The proof, therefore, shows Respondent’s knowledge of the uninsured status of the offending vehicle beyond the three and six-year statutes of limitations applicable here (*see New York City Tr. Auth. v Hill*, 107 AD3d 897 [2d Dept 2013]).

Monaco, therefore, failed to meet her burden establishing an accrual date beyond the date of the accident. Consequently, the three-year statute of limitations applicable to NYCTA expired on September 20, 2014, and the six-year statute of limitations applicable to GEICO expired on September 20, 2017 at the very latest.

CONCLUSION

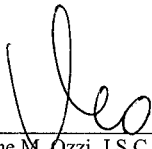
The petition and cross-petition seeking to permanently stay the uninsured motorist benefit arbitration sought by Adriana Monaco are granted in their entirety.

Accordingly, it is hereby:

ORDERED, the petition (001) and amended petition (003) filed by GEICO seeking to permanently stay arbitration is granted in its entirety; and it is further

ORDERED, the cross-petition (002) as amended filed by NYCTA seeking to permanently stay arbitration is granted in its entirety.

ENTER,



Hon. Wayne M. Ozzi, J.S.C.

DATED: January ¹⁸ 2019