

American Tr. Ins. Co. v Morel-Canela

2019 NY Slip Op 32508(U)

August 23, 2019

Supreme Court, New York County

Docket Number: 653110/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

-against-

LUIS R. MOREL-CANELA,

Respondent.

-----X
CAROL R. EDMEAD, J.S.C.:

DECISION AND ORDER

Index No.: 653110/2019

Motion Sequence 001

MEMORANDUM DECISION

In this Article 75 Action, American Transit Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing. In the alternative, Petitioner asks the court to direct Luis R. Morel-Canela (Respondent) to comply with various discovery demands pursuant to Petitioner’s insurance policy conditions. In reply, Respondent opposes the motion.

BACKGROUND FACTS

This action arises out of a car accident that occurred on June 10, 2018, when a vehicle driven by Respondent was struck by an unknown vehicle that left the scene. A few weeks after the accident, Respondent filed a no-fault application for an Uninsured Motorist Claim with Petitioner. Petitioner responded by letter dated August 28, 2018 acknowledging receipt of the application and noting the policy limits (NYSCEF doc No. 12). Petitioner also commenced an investigation with the New Jersey Motor Vehicles Commission to attempt to identify the driver

who fled the scene in order to ascertain coverage (NYSCEF doc No. 1, ¶ 10). Respondent filed a demand for arbitration with the American Arbitration Association for uninsured motorist arbitration (NYSCEF doc No. 3). Petitioner now wishes to stay the proceeding pending the outcome of a Framed Issue Hearing on the issue of insurance coverage. It has named as Proposed Additional Respondents the unidentified driver who caused the accident and his or her insurance company, referred to as “John Doe” and “John Doe Insurance.” Petitioner also claims that Respondent has not complied with pre-arbitration conditions precedent, including an examination under oath and the exchange of medical records. Respondent, in opposition to the petition, argues that he has fully complied and that the proposed Framed Issue Hearing is an unnecessary delay tactic.

DISCUSSION

A party seeking a stay of arbitration pursuant to Article 75 has the burden of establishing a “genuine triable issue” that justifies the relief. *Matter of Empire Mut. Ins. Co. (Zelin)*, 120 AD 2d 365 (1st Dept 1986). When such an issue exists, “the appropriate procedure is to stay the arbitration pending a trial of the threshold issue.” *Id.* If the moving party cannot establish any preliminary triable matter, the stay will not be granted. It is well established that an insurer is entitled to obtain all relevant information to evaluate claims prior to an arbitration hearing. *Progressive Ne. Ins. Co. v. Vandusen*, 22 Misc. 3d 1128(A) (Sup. Ct. 2009). Therefore, the failure of a party to provide an insurer with relevant discovery pursuant to its policy provisions may constitute a justifiable delay of an arbitration hearing. However, “the right to secure the discovery of the information is considered waived if the insurer unreasonably delays in the

exercise of that right.” *Matter of Allstate Ins. Co. v Urena*, 208 AD2d 623 (2nd Dept 1994). A stay is therefore not warranted if the insurer unreasonably delays when it had ample time to seek discovery and fails to do so. If an insurer can demonstrate a “justifiable excuse” for its failure to promptly seek discovery, a temporary stay of arbitration may be granted. *Matter of Government Employees Ins. Co. v Mendoza*, 69 AD3d 623 (2nd Dept 2010). Examples of circumstances that may justify a reasonable delay include continued settlement negotiations and newly divulged information revealing injuries more severe than originally understood. *Matter of Metropolitan Prop. & Cas. Ins. Co. v Keeney*, 241 AD2d 455 (2nd Dept 1997).

Here, the Court finds that Petitioner has not demonstrated any basis for a stay of the arbitration proceeding. Respondent sent over all medical records to Petitioner in February 2019 and has completed an Examination Under Oath and various Independent Medical Examinations (NYSCEF docs No. 13, 14, 15). The facts here are therefore distinguishable from cases where courts found that an insurer’s delay in seeking discovery was justified because a claimant refused to comply with or ignored discovery demands. Petitioner also claims that Respondent’s arbitration is premature pending the outcome of a Framed Issue Hearing to ascertain the identity and insurance coverage of the driver at fault. However, Petitioner has been aware of this claim since June 2018, and commenced its own investigation to determine the identity of the driver shortly thereafter. Petitioner demonstrates no basis for why a separate Framed Issue Hearing is necessary, or why such a hearing would lead to any results not already obtained by the prior investigation, especially as Respondent has warranted he has no information regarding the

identity of the driver (NYSCEF doc No. 9, ¶ 11). A Framed Issue Hearing would thus serve no purpose beyond delaying Respondent's arbitration.

It should be noted that information disclosures can still be conducted prior to arbitration hearings, even in the absence of a stay, if such disclosure is warranted by the circumstances. *Vandusen*, 22 Misc. 3d 1128(A). If further medical examinations are truly necessary for arbitration, as Petitioner claims, Petitioner should schedule them before the arbitration hearing. However, the hearing need not be postponed to accommodate these examinations, as Respondent has already undergone various examinations. Respondent should, of course, cooperate in complying with any additional discovery measures that are scheduled prior to the hearing. Regardless, Petitioner's application for a stay of arbitration is still denied in its entirety.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED and that the petition of American Transit Insurance is denied in its entirety;

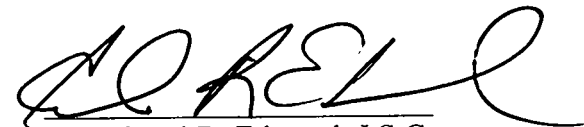
and it is further

ORDERED that the petition is dismissed; and it is further

ORDERED that the Clerk of the Court is respectfully requested to enter judgment accordingly; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry, on all parties within 15 days of entry.

Dated: August 23, 2019



Hon. Carol R. Edmead, J.S.C.