

Matter of Allstate Ins. Co. v Gittens
2019 NY Slip Op 32808(U)
September 20, 2019
Supreme Court, New York County
Docket Number: 652997/2019
Judge: Eileen A. Rakower
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of Application of
ALLSTATE INSURANCE COMPANY,

Index No.
652997/2019

Petitioner,

- against -

SHANTELL L. GITTENS and DONNA M.
CISSE, Respondents, and CATERING BY MC INC.,
JOHN DOE, and STATE FARM INSURANCE
COMPANY, Proposed Additional Respondents.

**DECISION
and ORDER**

Motion Seq. 1

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HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Allstate Insurance Company (“Petitioner”) submits this Petition for an Order staying all arbitration proceedings pending a determination on the instant Petition pursuant to CPLR § 7503; directing joinder of Proposed Additional Respondents Catering by MC, Inc., John Doe and State Farm Insurance Company (“State Farm”) (collectively, “Proposed Additional Respondents”) pursuant to CPLR § 1001; and directing Respondents Shantelle L. Gittens and Donna M. Cisse (collectively, “Respondents”) to comply with Petitioner’s pre-arbitration discovery provisions contained in the uninsured motorist indemnification endorsement. Respondents and Proposed Additional Respondents oppose.

Factual Background/Parties’ Contentions

This proceeding arises out of a motor vehicle accident which occurred on June 9, 2018.

Petitioner asserts that the “alleged responsible vehicle” was leased by Catering by MC, Inc. and driven by “John Doe”. Petitioner contends that the Police Report states that the alleged uninsured car had a New York License Plate Number 77566MH. Petitioner argues that at the time of the accident the car was registered to Catering by MC, Inc and was insured by State Farm under policy number 2206-730-32. Petitioner asserts that it received correspondences from State Farm that indicated State Farm insured Catering by MC, Inc. and set up a claim number for the accident. Therefore, Petitioner argues that the “documentation constitutes prima facie

evidence that a valid insurance policy was in existence on the alleged offending vehicle at the time of the” alleged accident. (Petition at 3).

Petitioner asserts that if the Court does not grant the permanent stay, a temporary stay is necessary so a framed-issue hearing can be held to “resolve the issue of involvement and insurance coverage by State Farm” and to allow the parties to “conduct a physical examination and/or obtain an examination under oath and/or obtain medical records.” (Petition at 3-4). Moreover, Petitioner argues that Proposed Additional Respondents should be joined as Respondents in order to have a complete and final resolution of the action.

In opposition, Respondents argue that they were “forcibly struck” by a vehicle with New York License Plate Number 77566MH, which was owned by Catering by MC, Inc. and operated by John Doe. Respondents assert that the Police Report does not state the insurance carrier for the above-mentioned vehicle. Respondents contend that Petitioner advised them that there is an active policy with State Farm, and on February 25, 2019, Respondents submitted a letter of representation to State Farm for a Bodily Injury Claim. Respondents argue that on April 5, 2019, they had a conversation with Tina Pickett, a bodily injury adjuster at State Farm, who advised Respondents that State Farm’s insured was not involved in the accident. Respondents contend that on March 4, 2019, State Farm had previously stated that Catering by MC, Inc. was insured by State Farm.

In further opposition, Proposed Additional Respondents argue that Catering by MC, Inc.’s vehicle was insured by State Farm but was not involved in the alleged accident that occurred on June 9, 2018. Proposed Additional Respondents contend that Jose Garcia Lopez, a former employee of Catering by MC, Inc., was in possession of the vehicle on June 9, 2018 but denied “making contact with any other vehicle”. (Proposed Additional Respondents Aff. in Opp. at 2). There is no affidavit provided from Mr. Lopez. Proposed Additional Respondents argue that Petitioner only provides an uncertified police report which contains inadmissible hearsay that the vehicle involved in the accident was insured by State Farm. Furthermore, Proposed Additional Respondents contend that if the Court decides Petitioner made a prima facie showing, a framed-issue hearing should be scheduled to determine whether the vehicle involved in the alleged accident was insured by State Farm.

Legal Standard

CPLR §7503(b) states, in relevant part:

Application to stay arbitration. Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with . . .

“The party seeking a stay of arbitration has the burden of showing sufficient facts to establish justification for the stay.” *AIU Ins. Co. v. Cabreja*, 301 A.D.2d 448, 449 [1st Dept 2003]. The First Department has held that the “Petitioner met its burden of proving identity of owner of offending vehicle and that it was insured at time of accident by offering, without objection, certified copy of police report and testimony of its insured, who was able to recall license plate number of automobile which struck her; report and insured’s testimony established that owner of offending vehicle was particular individual and respondent conceded it insured that individual on date of accident; respondent produced no evidence to demonstrate offending vehicle was not registered to that individual or that vehicle was driven without his consent.” *Allstate Ins. Co. v. Rock*, 183 A.D.2d 616 [1st Dept 1992]. “Where, however, ‘there is a genuine triable issue ... the appropriate procedure is to stay arbitration pending a trial of the threshold issue.’” *AIU*, 301 A.D. 2d at 449.

Discussion

Petitioner satisfies its “burden of showing sufficient facts to establish justification for the stay.” *AIU Ins.*, 301 A.D.2d at 449. According to the police report, the license plate that was identified at the scene of the accident was registered to a vehicle belonging to Catering by MC, Inc and was insured by State Farm. Respondents do not claim that the license plate number was an error. Respondents submit a correspondence from State Farm that confirms that the New York License Plate Number 77566MH identified in the police report was insured by State Farm at the time of the alleged accident. Respondents and Proposed Additional Respondents merely offer a hearsay statement by the owner of Catering by MC, Inc that “[m]y employee at the time, Jose Garcia Lopez, (he is no longer employed by me) was operating that vehicle at that time and denied making contact with any other vehicle on that date.” This hearsay assertion is insufficient to rebut Petitioner’s showing. The arbitration is permanently stayed.

Wherefore it is hereby

ORDERED that the application to permanently stay arbitration is granted; and it is further

ORDERED that Petitioner is directed to serve a copy of this order with notice of entry and serve upon the attorneys for the respondent and the arbitrator within 20 days of entry hereof and file all other documents as set forth above.

This constitutes the Decision and Order of the Court. All other requested relief is denied.

DATED: September 20, 2019



EILEEN A. RAKOWER, J.S.C.