

Liberty Mut. Ins. Co. v Armistead

2019 NY Slip Op 33514(U)

November 25, 2019

Supreme Court, New York County

Docket Number: 655213/2019

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

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LIBERTY MUTUAL INSURANCE COMPANY,

Petitioner,

-against-

MARIA ARMISTEAD,

Respondent.

-and-

DORIS LASANTA and GOVERNMENT
EMPLOYEES INSURANCE COMPANY,

Proposed Additional Respondents.

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

DECISION AND ORDER

Index No.: 655213/2019

Motion Sequence 001

MEMORANDUM DECISION

In this Article 75 Action, Liberty Mutual Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing. Respondent Maria Armistead (Respondent) opposes the motion.

BACKGROUND FACTS

This action arises out of a car accident that occurred on August 17, 2018, when Respondent sustained injuries in a collision involving a motorist that fled the scene. A year after the accident, Respondent filed a Notice of Intention to Arbitrate with Petitioner pursuant to a liability insurance policy that was in effect on the date of the accident (NYSCEF doc No. 4). The police report of the accident notes that the driver who hit Respondent fled the scene. The report

does not concretely identify the driver, but includes a “possible” license plate number for the driver (NYSCEF doc No. 5). A DMV search for the possible license plate number indicates that the car is owned by Proposed Additional Respondent Doris Lasanta and is insured by Proposed Additional Respondent Government Employees Insurance Company (“GEICO”) (NYSCEF doc No. 6).

Petitioner now moves for either a permanent stay of arbitration, or a temporary stay of arbitration pending a Framed Issue Hearing. Petitioner argues the hearing is necessary to determine whether Respondent has complied with the terms of the insurance policy, and whether Doris Lasanta and GEICO should be named as respondents. GEICO claims that it has no liability to Respondent, because although Doris Lasanta was insured on its policy, she was not involved in the accident. GEICO maintains that as nothing connects Lasanta to the incident beyond her license plate number being listed as a “possible number” in the police report, Petitioner and Respondent should immediately proceed to arbitration. Respondent similarly argues that as GEICO denied all liability, the matter should proceed to arbitration.

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). To establish its

entitlement to a permanent stay of arbitration, the insurer herein must meet its burden by showing that a hit-and-run accident did not occur. *See Travelers Property & Cas. Co. of America v. Mayen*, 82 AD3d 402 [1st Dept 2011] (a request for a permanent stay of arbitration is properly denied where the insurer fails to meet its burden of proof that a hit run accident did not occur), *citing Matter of Empire Mut. Ins. Co. [Greaney-National Union Fire Ins. Co. of Pittsburgh]*, 156 AD2d 154, 155, [1989]).

Here, it is undisputed that Respondent was insured by Petitioner on the date of the accident, and that a hit-and-run accident did occur. Therefore, Petitioner is not entitled to a permanent stay of arbitration. However, given that a question of fact exists as to the identity of the driver that caused the hit-and-run accident, Petitioner is entitled to a temporary stay pending a Framed Issue Hearing. Beyond their own affirmation, Proposed Additional Respondents have not produced any evidence demonstrating that they were not involved in Respondent's accident. GEICO's letter to Petitioner states that it has no obligation to pay for the losses but does not establish non-involvement by its insured (NYSCEF doc No. 11). Therefore, Petitioner is entitled to temporary stay of arbitration pending a Framed Issue Hearing on the matter of whether Respondent's alleged loss was caused by the vehicle with the license plate identified as a "possible" number in the police report, notwithstanding the denials of involvement by Proposed Additional Respondents (*see New York Cent. Mut. Fire Ins. Co. v Paredes*, 289 AD2d 495 [2d Dept 2001] ("When there is a triable issue of fact with respect to whether a claimant's vehicle had physical contact with an alleged "hit-and-run" vehicle, the appropriate procedure is to stay the arbitration pending a determination on that issue").

Petitioner also alleges that the arbitration should be stayed as Respondent has not sufficiently supplied Petitioner with copies of all medical records and authorizations, and has not yet submitted for an examination under oath and a medical examination. It should be noted that information disclosures can still be conducted prior to arbitration hearings, even in the absence of a permanent stay, if such disclosure is warranted by the circumstances. *Vandusen*, 22 Misc. 3d 1128(A). If further disclosures and examinations are truly necessary for arbitration, as Petitioner claims, Respondent should of course comply and cooperate. The Court, however, will not further delay the arbitration beyond the temporary delay necessitated by the Framed Issue Hearing, as Respondent served her Notice of Intention to Arbitrate months ago and Petitioner has already had sufficient time to conduct discovery.

CONCLUSION

Based on the foregoing, it is hereby

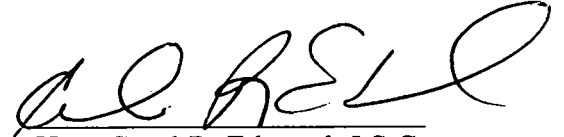
ORDERED that the issue of whether Respondent's alleged loss was caused by the vehicle operated and insured by Proposed Additional Respondents is referred to a Judicial Hearing Officer to Hear and Determine; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date; and it is further

ORDERED that the arbitration is stayed pending a determination of the issue noted herein; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

Dated: November 25, 2019



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

**HON. CAROL R. EDMOAD
J.S.C.**