

Hereford Ins. Co. v Concepcion

2020 NY Slip Op 30319(U)

January 27, 2020

Supreme Court, New York County

Docket Number: 655729/2019

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 IAS MOTION 35EFM

-----X

HEREFORD INSURANCE COMPANY,

Plaintiff,

INDEX NO. 655729/2019

MOTION DATE 12/18/2019

- v -

MOTION SEQ. NO. 001

CRISTIAN CONCEPCION, JASON ASCIOLLA,
NATIONWIDE PROPERTY AND CASUALTY INSURANCE
COMPANY

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for STAY.

Upon the foregoing documents, it is

In this Article 75 Action, Hereford Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing. Cristian R. Concepcion (Respondent) opposes the motion. The motion is also opposed by Nationwide Property and Casualty Insurance Company and Jason Ascioffa (Proposed Additional Respondents).

BACKGROUND FACTS

This action arises out of a car accident that occurred on November 3, 2016 when Respondent sustained injuries in a collision that occurred in the state of New Jersey. At the time of the accident, Respondent's vehicle was insured by Petitioner. The policy contained a New York Supplemental Uninsured Motorist Endorsement, with coverage limits of \$25,000 per person with a maximum of \$50,000 per accident to Respondent arising out of an accident involving an uninsured automobile in the state of New York (NYSCEF doc No. 1, ¶ 3). The

policy contained lower sums for accidents with uninsured vehicles that occurred in New Jersey, with limits of \$15,00 per person (*id.* at ¶ 4.).

Respondent's accident was caused by a vehicle owned by Proposed Additional Respondent Jason Ascioffa. However, Petitioner and Respondent dispute whether Ascioffa was an uninsured motorist; Petitioner claims he was insured at the time of the accident by Proposed Additional Respondent Nationwide Property and Casualty Insurance Company ("Nationwide") (*id.* at ¶ 7-8). Petitioner has therefore challenged Respondent's Demand for Arbitration on the grounds that Respondent's accident was not caused by an uninsured motorist. Petitioner further claims that Respondent has not complied with certain pre-arbitration discovery conditions, including a medical examination and depositions.

Respondent opposes the motion on the grounds that it is irrelevant where his accident occurs, as he is seeking not uninsured benefits but rather underinsured benefits because the adverse vehicle did not have bodily injury limits equal to or greater than Respondent's policy (NYSCEF doc No. 12, ¶ 6-7). Respondent argues that as the adverse vehicle's coverage is of a lesser amount, he is entitled to additional payment of his claims from Respondent.

Proposed Additional Respondents also oppose the grounds that Nationwide has already tendered payment to Respondent to the fullest extent of Nationwide's policy limits (NYSCEF doc No. 13, ¶ 3). As there is no further coverage available, Nationwide contends it is not subject 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, Petitioner has demonstrated its entitlement to a permanent stay of the arbitration sought. Documentary evidence submitted by Petitioner demonstrates that Respondent’s coverage included Uninsured Motorist coverage but not Supplemental Uninsured/Underinsured coverage (NYSCEF doc No. 4 at 2). Nationwide has also provided documentary evidence certifying that Respondent was paid \$15,000 in accordance with the statutory New Jersey uninsured motorist minimum coverage limit (NYSCEF doc No. 13, ¶ 3). Given that Respondent has been paid for his claims in full, no other coverage is available from Petitioner as Respondent is not entitled to underinsured benefits. Thus, Respondent lacks a condition precedent necessary to initiate an arbitration hearing involving Petitioner and Proposed Additional Respondents.

CONCLUSION

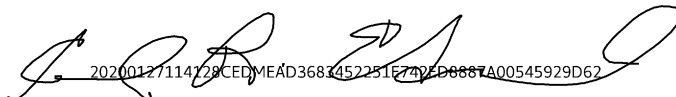
Based on the foregoing, it is hereby

ORDERED that Petitioner’s motion for an order pursuant to CPLR 7503 permanently staying the arbitration sought by Respondent is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order, along with notice of entry, on all parties within 10 days of entry.

Dated: January 27, 2020



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1/27/2020

DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE