Matter of Old Republic Ins. Co. v Geico Indem. Inc.
2020 NY Slip Op 30682(U)
March 2, 2020
Supreme Court, Kings County
Docket Number: 510461/19
Judge: Peter P. Sweeney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
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Index No.: 510461/19
Motion Date: 11-25-19
Cal. No.: 41

In the Matter of the Application of

OLD REPUBLIC INSURANCE COMPANY and
RYDER TRUCK RENTAL, INC.,

Petitioner,

-against-

AMENDED DECISION/ORDER

GEICO INDEMNITY INC.,

Respondent,
----------x

The following papers numbered 1 to 3 were read on this petition:

Papers:	Numbered:
Notice of Petition, Petition & Exhibits.....	1
Answering Affirmations/Affidavits/Exhibits.....	2
Reply Affirmations/Affidavits/Exhibits.....	3

Upon the foregoing papers, the petition is decided as follows:

The petitioners, OLD REPUBLIC INSURANCE COMPANY and RYDER TRUCK RENTAL, INC., brought this special proceeding pursuant to CPLR 7511 (b)(1) and (b)(2) seeking to vacate a arbitration award.

Background:

This proceeding arises out of a motor vehicle accident that occurred on August 11, 2017 in New York County. There were two vehicles involved in the accident, one of which was a truck that was owned by petitioner, Ryder Truck Rental, Inc. ("Ryder") and operated by Joseph Privat. The other vehicle was owned and operated by, who is an insured under a policy of insurance issued by the respondent, Geico Indemnity Inc. ("Geico"). Following the accident,

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Melissa Marshall Roper submitted claims for first-party no-fault benefits to Geico for the medical treatment he received for injuries that allegedly resulted from the accident Geico honored these claim and paid a total of $23,417.84 in first-party no-fault benefits. After paying the claims, Geico commenced a "loss transfer" arbitration pursuant to Insurance Law § 5105[1] against OLD REPUBLIC INSURANCE COMPANY ("Old Republic"), one of the petitioners herein, seeking to recoup the amount it paid in first-party no-fault benefits. Old Republic is Ryder's insurer. Old Republic did not appear for the arbitration and Geico was awarded $23,417.84. Ryder was never served with the demand to arbitrate.

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[1]Insurance Law § 5105, in relevant part, provides:

> (a) Any insurer liable for the payment of first party benefits to or on behalf of a covered person and any compensation provider paying benefits in lieu of first party benefits which another insurer would otherwise be obligated to pay pursuant to subsection (a) of section five thousand one hundred three of this article or section five thousand two hundred twenty-one of this chapter has the right to recover the amount paid from the insurer of any other covered person to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law. In any case, the right to recover exists only if at least one of the motor vehicles involved is a motor vehicle weighing more than six thousand five hundred pounds unloaded or is a motor vehicle used principally for the transportation of persons or property for hire... .
>
> (b) The sole remedy of any insurer or compensation provider to recover on a claim arising pursuant to subsection (a) hereof, shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent. Such procedures shall also be utilized to resolve all disputes arising between insurers concerning their responsibility for the payment of first party benefits.

The Parties' Contentions:

Old Republic now seeks judgment vacating the arbitration award claiming that since it was never a member of Arbitration Forums or a signatory to any agreements with Arbitration Forums, there was no basis for Geico to submit its claim for reimbursement to arbitration. Ryder contends that since it was never served with a demand to arbitrate, the arbitration award should also be vacated as against it.

Geico maintains that its claim for reimbursement of first-party no-fault benefits was subject to mandatory arbitration pursuant to Insurance Law § 5105 and it makes no difference that Old Republic was never a member of Arbitration Forums or a signatory to any agreements with Arbitration Forums. Geico further claims that since Ryder was not a necessary party to the arbitration, it was not required to serve it with a demand to arbitrate.

Analysis:

Petitioner Old Republic's motion to vacate the arbitration award on any of the grounds set forth in CPLR 7511(b)(2), including on the ground that there was no agreement to arbitrate between Geico and Old Republic, is denied. Relief under this section is available only to a party "who neither participated in the arbitration nor was served with a notice of intention to arbitrate" (CPLR 7511[b][2]; *Interboro Mut. Indem. Ins. Co. v. Legros*, 205 A.D.2d 537, 537, 614 N.Y.S.2d 278, 279). Here, while Old Republic did not participate in the arbitration, the petition does not allege that Old Republic was not served with the demand to arbitrate.

Further, as the Court stated in stated in *Hunter v. OOIDA Risk Retention Grp., Inc.*, 79 A.D.3d 1, 10, 909 N.Y.S.2d 88, 95:

> A prerequisite for the applicability of inter-company loss transfer under Insurance Law § 5105(a) is that both the insured to or on

> behalf of whom first-party benefits were paid, and another insured person who would have been liable but for the no-fault law, are "covered persons" (Insurance Law § 5105 [a]). "Covered person" is defined under the Insurance Law, in relevant part, as "any owner, operator, or occupant of, a motor vehicle which has in effect the financial security required by article six ... of the vehicle and traffic law" (Insurance Law § 5102[j]).

Once this prerequisite has been met, arbitration between insurers pursuant to Insurance Law § 5105 is mandatory and does not depend on the existence of an agreement to arbitrate *(see Doherty v. Barco Auto Leasing Co.,* 144 A.D.2d 424, 426, 533 N.Y.S.2d 976; *State Farm Mut. Auto. Ins. Co. v. City of Yonkers*, 21 A.D.3d 1110, 1111, 801 N.Y.S.2d 624, 626). Old Republic contention that it was never a member of Arbitration Forums is therefore not a basis to vacate the arbitration award.

Certainly, petitioners did not demonstrate that Insurance Law § 5105(a) was inapplicable. As stated above, the prerequisite for the applicability of inter-company loss transfer pursuant to Insurance Law § 5105(a) is that both the insured to or on behalf of whom first-party benefits were paid, and another insured person who would have been liable but for the no-fault law, are "covered persons" (Insurance Law § 5105 [a]). Petitioners do not dispute that Melissa Marshall Roper is a"covered person" within the meaning of Insurance Law § 5105[a], nor did they demonstrate that Ryder and Joseph Privat were not. The fact that the Old Republic policy may have been sold out of state is not dispositive (*see Hunter*, 79 A.D.3d at 12, 909 N.Y.S.2d at 96; *Fireman's Ins. Co. of Newark, N.J. v. Le Compte*, 194 A.D.2d 918, 919, 599 N.Y.S.2d 139, 141; *Aetna Life & Cas. Co. v. Allstate Ins. Co.*, 207 A.D.2d 984, 616 N.Y.S.2d 838, 838, *see also* 11 CRR-NY 65-1.8).

With respect to Ryder, since there is no language in Insurance Law § 5105 indicating that

an insured is a necessary party to the loss transfer arbitration mandated, whether Ryder was served with a demand to arbitrate is irrelevant. Moreover, it has not been demonstrated that Ryder has been aggrieved by the arbitration award.

For all of the above reasons, it is hereby

ORDERED and ADJUDGED that the petition is dismissed and the arbitration award is confirmed.

This constitutes the amended decision, order and judgment of the Court and replaces the decision and order dated January 28, 2020, which is hereby recalled and vacated.

Dated: March 2, 2020

PETER P. SWEENEY, J.S.C.

HON. PETER P SWEENEY

Nancy T. Sunshine

NANCY T. SUNSHINE
Clerk

KINGS COUNTY CLERK
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