

<b>State Farm Mut. Auto. Ins. Co. v Sanchez</b>
2020 NY Slip Op 32549(U)
August 3, 2020
Supreme Court, New York County
Docket Number: 657734/2019
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

*Justice*

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INDEX NO. 657734/2019

STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY

MOTION DATE 03/03/2020

Petitioner,

MOTION SEQ. NO. 001

- v -

ALEXANDRO SANCHEZ,

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for STAY

ORDER

Upon the foregoing documents, it is  
ORDERED and ADJUDGED that the petition pursuant to CPLR §  
7503(b) is denied and the proceeding is dismissed, without costs  
and disbursements to respondent.

DECISION

Respondent filed a demand for an uninsured motorist  
arbitration around September 30, 2019 (NYSCEF Doc. No. 3), under  
a policy that petitioner issued to Profit General Contractor &  
Contracting, LLC (Profit) (NYSCEF Doc. No. 5).

Respondent's accident occurred on October 17, 2018, and  
petitioner received the demand for arbitration on October 15,  
2019. The accident occurred when the uninsured vehicle collided

with respondent, who was riding a bicycle at the time (NYSCEF Doc. No. 4). Petitioner contends that respondent is not an insured under the policy and therefore it seeks to stay the arbitration.

In support, petitioner points to the policy's declaration page, and it notes that only Profit is listed as a named insured (NYSCEF Doc. No. 5, at 000001-000003). The policy defines "insured" to include

- (1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;
- (2) any person while acting in the scope of that person's duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:
  - (i) your employee and you are a fire department;
  - (ii) your member and you are a fire company, as defined in General Municipal Law section 100;
  - (iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or
  - (iv) your member and you are a voluntary ambulance service as defined in Public Health Law section 3001;
- (3) any other person while occupying:
  - (i) a motor vehicle insured for SUM under this policy; or
  - (ii) any other motor vehicle being operated by you or your spouse; and

(4) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1), (2), or (3) above.

Further, petitioner observes that the words "you" and "your" refer only to the insured whose name or names appear on the Declarations Page (NYSCEF Doc. No. 1 ¶ 13). Petitioner stresses that respondent is not expressly named as an insured, and it argues that respondent does not fall within the other covered categories. Petitioner argues that respondent was on a bicycle and not the Ford box truck listed on the policy, and that respondent cannot be a spouse or relative of Profit, which is a business entity (citing Buckner v Motor Veh. Acc. Indem. Corp., 66 NY2d 211 [1985]; Matter of Travelers Prop. Cas. Corp. [Hershman], 287 AD2d 412 [1st Dept 2001] [Hershman], lv denied 97 NY2d 610 [2002]).

In opposition, respondent argues that the language of the policy belies petitioner's position that he is not a covered party (NYSCEF Doc. No. 12). He points out that Profit is an LLC which respondent owns and operates out of his house. He notes that respondent signed the policy, that he - and not the LLC - took an accident prevention course which reduced the policy premium, and that the policy included a supplemental spousal coverage option, which could not have been offered to the spouse of the LLC. Respondent further states that he has demanded

documents showing a lack of coverage and that the petition should be denied pending production of the documents.

"On the initial application for a stay of arbitration, the burden rests on the party seeking the stay to establish the existence of evidentiary facts, sufficient to conclude that there is a genuine preliminary issue" (Matter of Progressive Specialty Ins. Co. v Guzmanino, 170 AD3d 416, 417 [1st Dept 2019]). Moreover, insurance policies are construed liberally in favor of the insured (Matter of Hanover Ins. Co. [St. Louis], 119 AD2d 529, 532 [1st Dept 1986]), and any ambiguity in the policy is resolved in favor of the insured (Handelsman v Sea Ins. Co., 85 NY2d 96, 101 [1984]). Although the court considers the insuring clause, it also looks at the exclusions provision for context (Morette v Kemper, Unitrin Auto & Home Ins. Co., Inc. (35 Misc. 3d 200, 205-206 [Sup Ct, Essex County 2012])).

Petitioner is correct that, when it evaluated similar language in another insurance policy, the Court of Appeals determined that a family-owned corporation's automobile insurance policy did not extend to the son of two of its officers, when the son sustained injuries in a bicycle accident (Buckner, supra, 66 NY2d at 212-213). Hershman, upon which petitioner also relies, reached a similar conclusion when a corporate officer and/or shareholder's son was struck by a car (Hershman, supra, 287 AD2d at 412).

However, petitioner overlooks the fact that Buckner expressly distinguished situations in which a partnership was the policyholder, because "partnerships being a combination of individuals, who can suffer injuries and do have spouses, households and relatives" (Buckner, 66 NY2d at 214). Furthermore, a limited liability corporation is "more akin to a partnership than a corporation" (Matter of United Financial Cas. Co. v Tekel, - AD3d -, 2020 NY Slip Op 03909, \*1 [2d Dept 2020] [Tekel]). Therefore, in Tekel, the Second Department determined that the distinction set forth in Buckner applied, and it affirmed the trial court's decision denying the stay of arbitration. The case at bar is stronger than Tekel in that respondent is the sole owner of the LLC, which operates out of his home, and he rather than a family member sustained the injuries in question.

Factually, the facts of the instant matter have even more in common with those of Morette. In Morette, Anthony Morette, the sole owner of policyholder A.T. Morette Electric LLC, allegedly was struck by an unidentified motor vehicle while he was jogging. Ultimately, Mr. Morette's wife and daughter sought a declaratory judgment that the insurer, Merchants Mutual Insurance Company, was liable for SUM coverage (Morette, supra, 35 Misc. 3d at 201-202). The court denied the insurers' motion for summary judgment, rejecting Merchants' argument that because

the LLC was the named insured, SUM coverage was unavailable. In reaching such conclusion, the court relied on a few key provisions, including the option to pay a premium for spousal liability coverage (id. at 206). It further noted that the exclusions page did not exclude the member of the LLC from injuries that were relevant to the facts at hand. Here, too, the option to purchase spousal liability coverage existed, and coverage for a bike accident was not excluded. In addition, the exclusions page indicates that petitioner had the discretion to provide coverage to the surviving spouse if the insured was deceased (NYSCEF Doc. No. 5, at 000029). Further, as respondent points out, petitioner provided a discount to the LLC because respondent took an accident prevention course, and this also weighs in favor of treating him as individually covered under the policy.

Based on the foregoing, the court concludes that petitioner has failed to establish that the accident at hand was excluded from coverage, and as there is no genuine preliminary issue, no stay shall issue.

8/3/2020  
DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE