

Allstate Ins. Co. v Truesdale

2020 NY Slip Op 32948(U)

September 8, 2020

Supreme Court, New York County

Docket Number: 651209/2020

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
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

ALLSTATE INSURANCE COMPANY,

Plaintiff,

- v -

NOEL TRUESDALE, ESURANCE PROPERTY &
CASUALTY INSURANCE COMPANY, JONATHAN
FLORES

Defendant.

-----X

INDEX NO. 651209/2020

MOTION DATE 10/27/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 12
were read on this motion to/for STAY.

Upon the foregoing documents, it is

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.

MEMORANDUM DECISION

In this Article 75 Action, Allstate Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing. Noel E. Trusdale (Respondent) opposes the motion.

BACKGROUND FACTS

This action arises out of a car accident that occurred on April 1, 2019, when Respondent sustained injuries in an automobile accident with an allegedly uninsured motorist (NYSCEF doc No. 1, ¶ 3). At the time of the accident, Respondent's vehicle was insured by Petitioner and Respondent's insurance policy included a provision for uninsured motorist benefits (NYSCEF doc No. 1, ¶ 2). The police report filed after the accident indicates that the accident was caused by a car registered to Proposed Additional Respondent Jonathan Flores (NYSCEF doc No. 12, ¶ 4). On the day of the accident, Mr. Flores was insured by Proposed Additional Respondent Esurance Property & Casualty Insurance Company ("Esurance") (*id.*). However, Esurance sent correspondence to Petitioner on August 2, 2019 indicating that they had conducted their own investigation and determined that Mr. Flores was not involved in April 1, 2019 accident (*id.* at ¶ 5). Esurance concluded it must deny all claims given the lack of evidence that their insured was involved in the accident.

Petitioner argues that notwithstanding said correspondence, the claim for uninsured motorist arbitration should be permanently stayed as Esurance has not provided evidence demonstrating that Mr. Flores was not involved in the accident. Petitioner contends that the letter from Esurance shifts the burden of proof of demonstrating that the adverse vehicle was uninsured to Esurance (NYSCEF doc No.1 at ¶ 7). Petitioner thus concludes that as Esurance has not met its burden of proving the adverse vehicle not driven by Mr. Flores and was uninsured, the

arbitration should thus be permanently stayed. In the alternative, Petitioner requests a temporary stay pending the results of a Framed Issue Hearing. Should Respondent prove that the adverse driver was uninsured, Petitioner requests that Respondent be compelled to comply with certain pre-arbitration discovery conditions.

In opposition, Respondent argues that Petitioner's application is improper as the identity of the driver of the adverse vehicle is unclear at this juncture, and there is a question of fact as to whether the Esurance disclaimer of coverage is valid. Respondent supports Petitioner's proposition for a hearing on the issue of insurance coverage on the alleged uninsured vehicle, with Esurance and Mr. Flores added as respondents.

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 AD2d 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]).

The issue of whether the loss sustained by Respondent was caused by Mr. Flores or a separate, unidentified uninsured motorist is a circumstance that warrants a hearing (*see Hanover Ins. Co. v Lewis*, 57 AD3d 221, 868 NYS2d 640 [1st Dept 2008]). It is undisputed that “Physical contact [with an uninsured vehicle] is a condition precedent to the arbitration of this uninsured motorist claim” (*Hanover Ins. Co. v Lewis*, 57 AD3d 221, 868 NYS2d 640 [1st Dept 2008] citing *Matter of Empire Mut. Ins. Co. [Zelin]*, 120 AD2d 365, 502 NYS2d 20 [1986]). Thus, an issue of fact regarding whether the adverse motorist was uninsured at the time of the accident normally warrants a hearing before the matter can proceed to arbitration.

Here, a Framed Issue Hearing is a necessary precondition to the arbitration sought by Petitioner as there is a question of fact as to the identity of the driver that caused the accident. Once the identity of the adverse vehicle has been determined, a hearing is also needed to establish whether the adverse vehicle was uninsured at the time of the accident. This matter must be adjudicated before the matter can proceed to arbitration.

Regarding Petitioner’s contentions that Respondent has not complied with necessary conditions precedent to the arbitration, 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 time necessitated for the Framed Issue Hearing as Respondent served her demand over a year 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.

9/8/2020
DATE


HON. CAROL R. EDM EAD, J.S.C.
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: