

State Farm Mut. Auto. Ins. Co. v Van Dunk
2020 NY Slip Op 34360(U)
December 30, 2020
Supreme Court, New York County
Docket Number: 652671/2020
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 652671/2020

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

MOTION DATE 10/19/2020

Petitioner,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

JUDI VAN DUNK,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 3 4 5 6 7 9 10 15 17 18

were read on this motion to/for STAY

Upon the foregoing documents, it is

ORDERED that Petitioner's application for a temporary stay (Motion Seq. 001) is granted and the underlying arbitration proceeding Judi Van Dunk v State Farm Insurance Company (Case Number 01-20-0005-0342) is stayed pending the completion of pre-arbitration discovery; and it is further

ORDERED that Respondent is directed to comply with all pre-arbitration discovery; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon Respondent and the American Arbitration Association within twenty (20) days of entry.

MEMORANDUM DECISION

In this Article 75 proceeding, Petitioner State Farm Mutual Automobile Insurance Company moves pursuant to CPLR 7503 for an order temporarily staying an arbitration proceeding pending pre-arbitration discovery, including an examination under oath and medical authorizations (motion seq. 001). Respondent Judi Van Dunk opposes the petition in its entirety.

BACKGROUND FACTS

This action arises out of a car accident that occurred on June 11, 2017, when Respondent allegedly sustained injuries in a collision involving a motorist that fled the scene. At the time of the accident, Respondent's vehicle was insured by Petitioner.

On June 16, 2017, Respondent filed a notice of claim for No-Fault, bodily injury, and uninsured/underinsured motorist coverage with Petitioner (NYSCEF doc No. 15, ¶ 4).

On July 13, 2017, Petitioner assigned claim number 52-0408-R47 to Respondent's claim after receiving notice of the No-Fault application (*id.*, ¶ 5).

Petitioner conducted an investigation of the claim¹ and found that the damage to Respondent's vehicle was minor, consisting of only a minor dent and scratching (NYSCEF doc No. 6, ¶ 6). Petitioner also found that although the police report of the accident reflects that Respondent suffered no injuries, Respondent was diagnosed with two torn meniscuses in both knees and underwent surgery for each knee in 2019 and 2019, as well as a nerve block injection (*id.*). Respondent underwent treatment for two years after the accident until July 2019, then stopped and resumed again in February 2020 (*id.*). Additionally, Petitioner found that at the time of the accident, Respondent was already undergoing treatment for a loss that occurred on March

¹ Petitioner does not provide the date(s) of the investigation.

20, 2017, and that she then sustained an injury and filed a worker's compensation claim for a loss that occurred shortly after the accident on June 30, 2017 (*id.*).

On April 22, 2020, Respondent filed a Demand for Uninsured Motorist Arbitration with the American Arbitration Association (NYSCEF doc No. 10). At that time, non-essential court filings were suspended due to the COVID-19 crisis pursuant to Chief Judge Lawrence Marks' Administrative Order AO/78/20.

On June 23, 2020, shortly after the restrictions on new case filings were lifted in late May, Petitioner commenced the proceeding now before this court. Petitioner contends that the arbitration demanded by Respondent should be temporarily stayed to conduct discovery as Respondent has not served sufficient proof of her injuries, and there are questions of fact regarding how her various medical procedures are related to the subject accident. Petitioner thus requests a stay of the arbitration pending the appearance of Respondent at an examination under oath and documentary disclosure.

In opposition, Respondent argues that Petitioner's long delay in making discovery demands constitutes a "waiver" of any pre-arbitration discovery and Petitioner is accordingly estopped from seeking a temporary stay for purposes of discovery. Respondent further contends that Petitioner has not provided any reasonable excuse for why it did not seek discovery after receiving Respondent's initial claim in 2017. Respondent concludes that Petitioner's application should be denied in its entirety and the matter should immediately proceed to arbitration.

Petitioner, in response, maintains that at no point did it waive its legal right to seek pre-arbitration discovery or to compel Respondent to appear for an examination under oath (NYSCEF doc No. 18, ¶ 5).

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.*, 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]). Therefore, the failure of a party to provide an insurer with relevant discovery pursuant to its policy provisions may constitute a justifiable delay of an arbitration hearing. In a proceeding to temporarily stay arbitration of an underinsured motorist claim to allow for discovery in aid of arbitration, the court may direct the respondent to attend an examination under oath and to provide medical authorizations for the medical records and reports relative to the subject accident where it is entitled to such disclosure pursuant to the terms of the policy (*see* CPLR 3102[c]; *Matter of New York Cent. Mut. Fire Ins. Co. v. Serpico*, 45 AD3d 598, 598-599 [2d Dept 2007]).

However, “the right to secure the discovery of the information is considered waived if the insurer unreasonably delays in the exercise of that right” (*Matter of Allstate Ins. Co. v. Urena*, 208 AD2d 623 [2nd Dept 1994]). A stay is therefore not warranted if the insurer unreasonably delays when it had ample time to seek discovery and fails to do so. If an insurer can demonstrate a “justifiable excuse” for its failure to promptly seek discovery, a temporary stay of arbitration may be granted (*Matter of Government Employees Ins. Co. v. Mendoza*, 69 AD3d 623 [2nd Dept 2010]). Examples of circumstances that may justify a reasonable delay

include continued settlement negotiations and newly divulged information revealing injuries more severe than originally understood (*Matter of Metropolitan Prop. & Cas. Ins. Co. v Keeney*, 241 AD2d 455 [2nd Dept 1997]).

Here, the Court finds that Petitioner has not waived its right to pre-arbitration information disclosures, which it is entitled to as a condition precedent to coverage for an uninsured motorist claim (See New York Insurance Law 3420[f][2]). Although Respondent initially filed a claim for uninsured motorist benefits after the accident in June 2017, Petitioner had no notice of Respondent's intention to proceed to arbitration until Respondent served her demand in April 2020 (NYSCEF doc No. 18, ¶ 3). The evidentiary record of this proceeding does not reflect that either party took any action from the time the claim number was assigned to Respondent's case in July 2017 until Respondent's demand for arbitration April 2020, and Petitioner was thus never on notice in that period that Respondent intended to move forward with her claim.

The Court finds that neither party should either benefit or be penalized for the delay, as neither party moved the case forward prior to the arbitration demand. The Court also notes that the superseding, intervening delay caused by the COVID-19 pandemic should not be factored into its analysis regarding whether Petitioner unreasonably delayed in seeking discovery.²

The circumstances here are also inapplicable to those in the cases cited by Respondent in support of her argument for denial of a stay. For instance, Respondent relies on *State Farm Ins. Co. v Womble*, 25 AD3d 713 (2nd Dept 2006), where the court found that the insurer unjustifiably failed to seek discovery and thus denied a stay. However, in that case, the insurer sought a permanent stay and the evidentiary record did not reflect that the insurer ever sought further

² The Court notes the demand for arbitration was made in April 2020 when, as discussed *supra*, the court system was not accepting new filings. Furthermore, Respondent cannot have reasonably expected Petitioner to promptly seek discovery at the height of the COVID-19 pandemic when the entire state of New York was "on PAUSE" pursuant to Governor Cuomo's Executive Order 202.

information on the nature of the insured's injuries. Here, Petitioner seeks only a temporary stay to allow for an examination under oath and documentary disclosure regarding injuries that have been medically questioned (NYSCEF doc No. 7, ¶ 11). Petitioner did not "unreasonably delay" in exercising its right to discovery prior to the current proceeding, as Petitioner had no way of foreseeing that Respondent would file a demand for arbitration after nearly three years of taking no action.

Accordingly, the underlying arbitration is temporarily stayed pending the completion of pre-arbitration discovery, and Respondent shall cooperate in promptly scheduling an examination under oath and providing all medical authorizations sought so that the arbitration is not delayed any more than necessary.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Petitioner's application for a temporary stay (Motion Seq. 001) is granted and the underlying arbitration proceeding *Judi Van Dunk v State Farm Insurance Company* (Case Number 01-20-0005-0342) is stayed pending the completion of pre-arbitration discovery; and it is further

ORDERED that Respondent is directed to comply with all pre-arbitration discovery; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon Respondent and the American Arbitration Association within twenty (20) days of entry.

Carol R. Edmead
HON. CAROL R. EDMEAD
J.S.C.
J.S.C.

12/30/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: