

Matter of Progressive Advanced Ins. Co. v Mills

2021 NY Slip Op 30316(U)

February 3, 2021

Supreme Court, Kings County

Docket Number: 525518/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS, PART 73

Index No.: 525518/2020

Motion Date: 2-1-21

Mot. Seq. No.: 1

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 In the Matter of the Application of
 PROGRESSIVE ADVANCED INSURANCE COMPANY
 to Stay Arbitration,

Petitioner,

-against-

DECISION/ORDER

TRUDIAN MILLS, CORY VICTORIAN,

Respondents,

-----X

Upon the following e-filed documents, listed by NYSCEF as item numbers 1-15, the petition is decided as follows:

The petitioner, PROGRESSIVE ADVANCED INSURANCE COMPANY, moves for an order pursuant to CPLR § 7503(c):

- A. permanently staying the respondents, TRUDIAN MILLS and CORY VICTORIAN, from proceeding at the American Arbitration Association against the petitioner with respect to their Uninsured Motorist claims, or in the alternative;
- B. temporarily staying the arbitrations pending a hearing on the issue of whether Respondents were involved in a fraudulent/intentional act for which there is no coverage under the subject policy;
- C. granting a stay to allow Petitioner to file a Declaratory Judgment action for a judgment declaring that an accident did not occur as the incident was a fraudulent/intentional act;
- D. directing respondents, TRUDIAN MILLS and CORY VICTORIAN, to provide pre-arbitration discovery; and
- F. directing such other and further relief as the Court may deem just and proper.

Background:

The respondents were allegedly injured as a result of a two-car accident that occurred on May 3, 2020, while they were passengers in a motor vehicle operated by Steven Parker, who was

operating the vehicle as a livery driver. The other vehicle left the scene of the accident and the owner and operator have not been identified. The petitioner claims that respondents conspired with the operator of the unidentified vehicle to stage the accident as part of an ongoing fraudulent scheme that targeted livery drivers. The petitioner now seeks to stay the arbitration of the respondents' claim for uninsured motorist benefits under a policy of insurance issued to Parker by the petitioner on the ground that there was no accident within the meaning of the uninsured motorist endorsement. While the allegations in the petition, if true, raise interesting issues as to whether the respondents were involved in staging the accident, the petition is unsupported by any admissible proof. The petition is verified by an attorney, who lacked personal knowledge of the facts, and who failed to support with proof in admissible form any of the facts alleged in the petition.

Discussion:

“The purpose of an uninsured motorist endorsement is to help effectuate New York's compulsory automobile liability insurance scheme ‘by providing coverage to injured persons who suffer automobile accident injuries at the hands of financially irresponsible motorists’ ” (*State Farm Mut. Auto. Ins. Co. v. Langan*, 55 A.D.3d 281, 283, 865 N.Y.S.2d 102, *mod* 16 N.Y.3d 349, 922 N.Y.S.2d 233, 947 N.E.2d 124, quoting *Matter of Country–Wide Ins. Co. v. Wagoner*, 45 N.Y.2d 581, 586, 412 N.Y.S.2d 106, 384 N.E.2d 653). With respect to an uninsured motorist endorsement, whether an occurrence qualifies as an accident is determined by whether the occurrence was an unexpected and unintended event from the perspective of the insured (*see State Farm Mut. Auto. Ins. Co. v. Langan*, 16 N.Y.3d 349, 353, 355, 922 N.Y.S.2d 233, 947 N.E.2d 124; *accord Matter of Utica Mut. Ins. Co. v. Burrous*, 121 A.D.3d 910, 911, 994 N.Y.S.2d 646; *Progressive Northeastern Ins. Co. v. Vanderpool*, 85 A.D.3d 926, 927, 924 N.Y.S.2d 583). “ ‘[A]n intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance’ ” (*Progressive Advanced Ins.*

Co. v. McAdam, 139 A.D.3d 691, 692, 32 N.Y.S.3d 191, quoting *Nationwide Gen. Ins. Co. v. Bates*, 130 A.D.3d 795, 796, 14 N.Y.S.3d 84).

As the party seeking a stay of arbitration based upon a lack of coverage, the petitioner bore the initial burden of “showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay” (*Matter of Liberty Mut. Ins. Co. v. Morgan*, 11 A.D.3d 615, 616, 782 N.Y.S.2d 662). Here, the petitioner failed to meet this burden. As stated above, while the allegations in petition raise interesting issues as to whether the alleged accident was staged by the respondents, the petition is unsupported by any admissible proof supporting this claim.

With respect to petitioner’s request for pre-arbitration discovery, although the petitioner had ample time to demand certain discovery of the respondents, as provided in the subject insurance policy, under the unusual circumstances of this case, the delay in seeking such discovery was justified (*Metro. Prop. & Cas. Ins. Co. v. Keeney*, 241 A.D.2d 455, 456, 660 N.Y.S.2d 54, 55). Thus, under the circumstances presented, the petitioner is entitled to a temporary stay of arbitration of the respondents’ underinsured motorist claims pending further discovery, including the exchange of medical, hospital, and employment authorizations and independent medical examinations of the respondents (*see, Motor Vehicle Acc. Indemnification Corp. v. Lucash*, 16 A.D.2d 975, 976, 230 N.Y.S.2d 262). (1997)

Accordingly, it is hereby

ORDRED that the petition is **GRANTED** solely to the extent that the arbitration of respondents’ claims for uninsured motorist benefits shall be temporarily stayed pending the completion of discovery, as set forth above, which shall be conducted forthwith. The petition is in all other respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: February 3, 2021

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020