

**State Farm Mut. Auto. Ins. Co. v Lora**

2022 NY Slip Op 30515(U)

February 15, 2022

Supreme Court, New York County

Docket Number: Index No. 157680/2020

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04

*Justice*

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INDEX NO. 157680/2020

STATE FARM MUTUTAL AUTOMOBILE INSURANCE  
COMPANY,

MOTION DATE 09/21/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

FRANKLYN LORA, LTM TRANSPORTATION CORP.,  
AMERICAN INTER-FIDELITY EXCHANGE, DRIVE NEW  
JERSEY INSURANCE COMPANY

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 17, 18, 19, 20,  
21, 22, 23, 25, 26, 27

were read on this motion to/for STAY.

This matter was transferred to Part IV.

Petitioner seeks, inter alia, an order permanently staying uninsured  
motorist arbitration on the basis that respondent failed to act with due diligence  
in ascertaining the insurance status of the other vehicle involved in the  
accident. Respondent Lora opposes contending that whether he acted with due  
diligence is a factual determination, he appeared for an examination under oath  
as required under the policy to receive coverage, and that he has proven the  
other vehicle was uninsured at the time of the accident.

“The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay” (*Matter of AutoOne Ins. Co. v. Umanzor*, 74 AD3d 1335 [2d Dept 2010]; see also *Hereford Ins. Co. v. Vazquez*, 158 AD3d 470 [1st Dept 2018]). An insured must act with due diligence in ascertaining the insurance status of the other vehicle involved in an accident (see e.g. *Matter of Continental Ins. Co. v. Josephson*, 280 AD2d 546 [2d Dept 2001]). “Where a triable issue of fact is raised, the Supreme Court, not the arbitrator, must determine it in a framed-issue hearing, and the appropriate procedure under such circumstances is to temporarily stay arbitration pending a determination of the issue” (*Matter of Hertz Corp. v. Holmes*, 106 AD3d 1001 [2d Dept 2013]).

Here, respondent Lora has raised a triable issue of fact related to whether he exercised due diligence in ascertaining the insurer, if any, of the other vehicle. Lora contends, inter alia: that he has photographs of the other vehicle involved in the accident, including photographs of the vehicle’s trailer’s license plate; that he spoke to the driver of the other vehicle; and he subsequently attempted to confirm whether various insurers provided coverage to the other vehicle. Respondent Lora further contends that he did not allow the photographs to be inspected by petitioner’s counsel at his examination under

oath because the photographs were located on his cellphone, which contained personal and private information.

Accordingly, it is

ORDERED that the motion is granted to the extent of directing respondent Lora serve copies of the photographs taken at the accident scene, including meta data contained therein, to all parties on or before March 18, 2022; and it is further

ORDERED that a framed issue hearing shall occur on April 27, 2022 at 3:30pm via Microsoft Teams as to whether respondent Lora exercised requisite due diligence in ascertaining the insurance status of the other vehicle; and it is further

ORDERED that decision is reserved on the portion of the motion seeking a permanent stay until completion of the framed issue hearing, as above; and it is further

ORDERED that arbitration proceedings are temporarily stayed pending the framed issue hearing, as above; and it is further

ORDERED that all parties shall provide the Court with courtesy electronic copies of evidence they intend to introduce at the framed issue hearing by April 15, 2022 in a single email to [SFC-Part4-Clerk@nycourts.gov](mailto:SFC-Part4-Clerk@nycourts.gov); and it is further

ORDERED that should, upon inspection of the photographs and evidence intended to be introduced at the hearing, the parties reach resolution of the issue or of this matter, they shall file a stipulation to NYSCEF so stating by April 22, 2022; and it is further

ORDERED that the motion is otherwise denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

2/15/2022  
DATE

  
FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE