

American Tr. Ins. Co. v Abreu
2022 NY Slip Op 30873(U)
March 15, 2022
Supreme Court, New York County
Docket Number: Index No. 653967/2021
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff,

- v -

LUIS ABREU, GEICO INSURANCE COMPANY, HONDA
LEASE TRUST, DOMONICK HOUSEN

Defendant.

-----X

INDEX NO. 653967/2021

MOTION DATE 06/22/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for STAY.

Petitioner-insurer seeks to permanently stay arbitration, pursuant to Article 75 of the CPLR, on the grounds that its insured is not entitled to uninsured motorist benefits as the other/adverse vehicle was insured. Alternatively, petitioner seeks to temporarily stay arbitration pending a framed issue hearing regarding the insurance status of the other/adverse vehicle. Respondent-insured opposes contending a framed issue hearing is unnecessary as Geico, the insurer of the other/adverse vehicle, has disclaimed coverage on the basis that the policy was purchased under false pretenses. Geico likewise contends that a stay is not warranted.

The party seeking to stay arbitration must establish a preliminary issue justifying the stay; where established, the burden shifts to party opposing the stay to rebut same (see e.g. *Matter of Hertz Corp. v. Holmes*, 106 AD3d 1001 [2d Dept 2013]). Here, petitioner-insurer has raised the insurance status of the other/adverse vehicle as a sufficient preliminary issue requiring a stay of arbitration proceedings. Stated differently, American Transit contends that the insurance status of the other vehicle is, at best, unsettled and a framed issue hearing is required to determine whether the other vehicle was insured at the time of the accident.

However, Geico, the insurer of the other/adverse vehicle, has submitted proof that coverage has been disclaimed based upon fraud, in the form of a disclaimer letter to petitioner (NYSCEF Doc. No. 11). The disclaimer letter states, in sum and substance as relevant here, that vehicles were added to the Geico policy over a period of months, Geico was not informed that these vehicles would be used for purposes other than the personal use for which they were insured, the vehicles were used as rental cars, and that Geico has disclaimed coverage on the basis that its insured misrepresented the intended use of the other/adverse vehicle when procuring the policy at issue.

In reply, petitioner alleges that Geico’s disclaimer is insufficient to deny a stay, and that a framed issue hearing must be conducted to determine whether Geico “complied with the statutory requirements governing policy cancellation” and “properly notified the DMV of its cancellation or rescission” (NYSCEF Doc. No. 15 at ¶ 6). Notably, petitioner does not specify which statutory requirements must be met by Geico regarding policy cancellation or DMV notification. Notwithstanding the purported centrality of this issue to petitioner’s motion, where a sophisticated corporate party has declined to perform research necessary to identify specific statutory requirements alleged to have been violated, this Court will not undertake its own research in place of that of the party.

Consequently, Geico has rebutted petitioner’s claim that the insurance coverage of the other/adverse vehicle is unknown – no coverage exists for this occurrence. There is no preliminary issue justifying a stay, and as such, the stay sought is unwarranted.

As to the status of the “proposed additional co-respondents,” the Court notes no application has been filed by petitioner to add Geico Ins. Co., Honda Lease Trust, or Domonick Housen as additional respondents in this action, nor

has the Court received any application to implead same. Accordingly, absent a proper motion seeking relief to add additional parties, the Court will not abide same.

Accordingly, it is

ORDERED that the motion for a stay is denied; and it is further

ORDERED that pre-arbitration discovery shall proceed as required by law; and it is further

ORDERED the matter is marked disposed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/15/2022
DATE


HON. FRANK P. NERVO, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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