

Matter of Government Empls. Ins. Co. v Lall
2022 NY Slip Op 32861(U)
August 15, 2022
Supreme Court, Kings County
Docket Number: Index No. 507906/2021
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 507906/2021
Motion Date: 5-23-22
Mot. Seq. No.: 1

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In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE
COMPANY to Stay Arbitration,

Petitioner,

DECISION/ORDER

-against-

NALINI LALL and SEELALL LALL,

Respondents.

ADALBERTO ONOFRE, RAFAEL REYES,
PLYMOUTH ROCK ASSURANCE and
PALISADES INSURANCE COMPANY,

Proposed Additional Respondent(s)
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KINGS COUNTY CLERK
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Upon the following e-filed documents, listed by NYSCEF as item numbers 1-17, the petition is decided as follows:

Petitioner GOVERNMENT EMPLOYEES INSURANCE COMPANY moves for an Order pursuant to CPLR 7503(c) granting a permanent stay of arbitration, or in the alternative, a temporary stay of arbitration pending a hearing on the issues of (1) whether the claimant Nalini Lall was a passenger in the vehicle being operated by Seelall Lall; and (2) whether the offending vehicle was in fact, "uninsured"; and 3) joining ADALBERTO ONOFRE, RAFAEL REYES, PLYMOUTH ROCK ASSURANCE and PALISADES INSURANCE COMPANY to this proceeding; 4) directing the respondents to produce a copy of all relevant medical records and authorizations, and to submit to examinations under oath and physical examinations, if, after a hearing, it is determined that respondents are entitled to proceed to arbitration; 5) for such other and further relief as to this Court deems just and proper.

The verified petition states: "The Demand for Arbitration alleges that the respondents sustained injuries in an accident on October 8, 2020, allegedly involving an uninsured motorist. ADALBERTO ONOFRE was the owner of the offending vehicle which bore NY plate number

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KED2943. Said vehicle was being operated by RAFAEL REYES.” A certified copy of the police accident report was annexed to the petition as Exhibit "B". (See NYSCEF Doc No. 4.)

Proposed additional Respondents ADALBERTO ONOFRE, PLYMOUTH ROCK ASSURANCE and PALISADES INSURANCE COMPANY (hereinafter “ONOFRE”, “PLYMOUTH” and “PALISADES”) oppose the petition on the basis that Plymouth and Palisades did not afford coverage for the vehicle operated by RAFAEL REYES (hereinafter “REYES”) on the date of the subject accident.

Respondents NALINI LALL and SEELALL LALL oppose the branch of the motion seeking a permanent stay and consent to a temporary stay pending a framed-issue hearing.

A party seeking a stay of arbitration of a claim for UM benefits has the initial burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay (*Government Employees Ins. Co. v. Hua Huang*, 139 A.D.3d 950, 951 [2nd Dept 2016] citing *Matter of Hertz Corp. v. Holmes*, 106 A.D.3d 1001, 1003, 966 N.Y.S.2d 157 [2nd Dept 2013]). Where a triable issue of fact is raised, the Supreme Court, not the arbitrator, must determine the preliminary issue in a framed-issue hearing. The appropriate procedure under such circumstances is to temporarily stay arbitration pending a determination of the issue (*Matter of Hertz Corp. v. Holmes*, 106 A.D. 3d 1001, 1003 [2nd Dept 2013]).

The certified police report indicates that the vehicle driven by Reyes was a 2008 Nissan Sedan with NYS license plate no. KED2943. Annexed as Exhibit “C” to the Petition (NYSCEF Doc No. 5) is a copy of the plate search conducted of the Department of Motor Vehicle records, which identifies the VIN number of the vehicle associated with NYS license plate no. KED2943 as WBADT43442GZ97767, and the make of the vehicle as an “02 BMW.”

In opposition, although Palisades contends that Palisades insured a 2002 BMW with the above VIN number covering the date of accident, and not a 2008 Nissan which is identified as the vehicle being driven by Reyes on the date of the accident in the Police Accident Report, Palisades did not demonstrate this by admissible proof. Although Palisades submitted a copy of the Declarations Page for the Palisades Policy issued to Onofre along with a copy of the Insurance Card effect on the date of accident (NYSCEF Doc No. 16), these documents were not

submitted in admissible form. No explanation was given as to why the VIN number for the 2002 BMW was the same as the VIN number on the police report. For this reason, and since the plate check indicates that Reyes was operating a vehicle with a license plate assigned to defendant ONOFRE and that PALISADES INSURANCE CO. was the insurer of a vehicle with this plate number, a framed issue hearing on this issue of whether Palisades was the insurer of the vehicle operated by Reyes on the day of the accident requires a framed issue hearing.

Accordingly, it is hereby

ORDERED that the branch of the petition to add ADALBERTO ONOFRE, PLYMOUTH ROCK ASSURANCE and PALISADES INSURANCE COMPANY as additional Respondents is GRANTED; it is further

ORDERED that the branch of the petition to add RAFAEL REYES as additional Respondent is GRANTED without opposition; it is further

ORDERED that the branch of the petition seeking a stay of arbitration shall be held in abeyance pending a framed issue hearing on the issues of 1) whether the offending vehicle was uninsured at the time of the accident; 2) whether claimant Nalini Lall was a passenger in the vehicle being operated by Seelall Lall. These issues shall be referred to a referee to hear and report; it is further

ORDERED that if it is determined that the respondents are entitled to proceed to arbitration, the respondents shall provide the petitioner with all relevant medical records and authorizations and submit to both an examination under oath and physical examination prior to proceeding to arbitration, if he/she/they has/have not already done so.

This constitutes the decision and order of this court.

Dated: August 15, 2022

PPS

PETER P. SWEENEY, J.S.C.

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