

Matter of Abreu v Motor Veh. Acc. Indem. Corp.

2023 NY Slip Op 33821(U)

October 27, 2023

Supreme Court, New York County

Docket Number: Index No. 153896/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 153896/2023

IN THE MATTER OF THE APPLICATION OF CHARLEY
ABREU

MOTION DATE 05/01/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 13, 14
were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

Upon the foregoing documents, and after oral argument which occurred on August 8, 2023, with Marc Battipaglia, Esq. appearing for Petitioner Charley Abreu ("Petitioner") and Judith Pluviose, Esq. appearing for Respondent Motor Vehicle Accident Indemnification Corporation ("MVAIC") ("Respondent"), Petitioner's Petition for an Order seeking permission to bring an action against Respondent pursuant to New York State Insurance Law Section 5218, is granted.

I. Factual Background and Procedural History

The instant action arises out of a motor vehicle accident (the "Accident") that occurred on January 11, 2022 (NYSCEF Doc. 8 at p.1). Petitioner was a pedestrian crossing the roadway in front of 808 East 139th Street, in Bronx County, New York, when he was struck by a motor vehicle that subsequently fled the scene (NYSCEF Doc. 8 at p. 1). The identity of the owner and operator of the unidentified vehicle that fled the scene was never obtained (NYSCEF Doc. 1 at p. 1).

On January 18, 2022, a Notice of Intention to Make a Claim to MVAIC was filed on behalf of Petitioner, within ninety (90) days from the date of the Accident, along with an affidavit of Petitioner stating that neither Petitioner nor anyone residing in the same household as Petitioner owned a vehicle at the time of the Accident (NYSCEF Doc. 1 at p.2).

Petitioner filed the instant Petition on April 26, 2023 seeking permission to bring an action against Respondent pursuant to §5218 of the New York State Insurance Law (NYSCEF Doc. 1). In support of the Petition, Petitioner filed an Affidavit dated April 17, 2023 (NYSCEF Doc. 8). Respondent filed an Affirmation in Opposition to Petitioner's Petition dated May 23, 2023 (NYSCEF Doc. 10). Petitioner filed a Reply Affirmation on August 7, 2023 (NYSCEF Doc. 14).

II. Discussion

Pursuant to New York Insurance Law §5218 “any qualified person having a cause of action for death or personal injury arising out of the ownership, maintenance or use of a motor vehicle in this state, when the identity of the motor vehicle and of the operator and owner cannot be ascertained...may , upon notice to the corporation, apply to a court for an order permitting an action therefor against the corporation in that court” (NY CLS §5218[a]). New York Insurance Law §5218(b) further states that the court “may make an order permitting the action when after a hearing it is satisfied that...the applicant has complied with the requirements of section five thousand two hundred eight of this article” (NY CLS §5218[b][1]).

New York Insurance Law §5208(a)(2)(A) states, in relevant part, that the protection provided by the corporation shall be available to “[a]ny qualified person having a cause of action because of death or bodily injury, arising out of a motor vehicle accident occurring within this state and reported within twenty-four hours after the occurrence to a police, peace or judicial

officer in the vicinity” (NY CLS §5208[a][2][A]). New York Insurance Law §5208(a)(2)(B) further specifies that “[t]he fact that the accident was not reported within twenty-four hours after the occurrence as required by subparagraph (A) hereof shall not prejudice the rights of the person if it is shown that it was not reasonably possible to make such a report or that it was made as soon as was reasonably possible” (NY CLS §5208[a][2][B]).

As discussed above, Petitioner alleges that the Accident occurred on January 11, 2022 (NYSCEF Doc. 8 at p.1). The MV-104 Report (the “Report”) annexed to Petitioner’s papers is dated January 14, 2022, three days following the alleged incident (NYSCEF Doc. 4). Petitioner’s papers provide no explanation as to why Petitioner delayed in filing the Report. Even if Petitioner were to claim that he could not have reported the Accident within twenty-four hours of its occurrence, Petitioner further fails to establish that the incident was reported as soon as reasonably possible pursuant to §5208(a)(2)(B) of the New York Insurance Law. It has been held that when a party fails to report an accident within the twenty-four hour period specified in Insurance Law §5208(a)(2)(A) and fails to show that the report was made as soon as reasonably possible, that party has “failed to comply with a condition precedent to the right to apply for payment from MVAIC and the action must, therefore, be dismissed” (*Omega Diagnostic Imaging, PC v MVAIC*, 2017 N.Y. Misc. Lexis 1523 [App Term, 1st Dept 2017]).

However, it is well settled that the statutory purpose of the twenty-four hour filing period imposed by New York Insurance Law Section 5208 “is to enable MVAIC to investigate claims and prevent fraud” (*Hempstead General Hospital v MVAIC*, 97 AD2d 544 [2d Dept 1983]). Annexed as Exhibit 1 to Plaintiff’s Petition (NYSCEF Doc. 14) is a copy of surveillance footage showing the Accident. As Plaintiff’s minimal delay in filing his Report was a mere forty-eight hours, and Plaintiff has provided surveillance footage showing the alleged Accident, the Court

finds that granting Plaintiff's Petition would not frustrate the statutory purpose of the twenty-four hour filing period imposed by Section 5208, namely, to enable Defendant to investigate Plaintiff's claims and prevent fraud. Therefore, in the interest of justice, Petitioner's Petition is granted.

Accordingly, it is hereby,

ORDERED that Petitioner Charley Abreu's Petition for an Order seeking permission to bring an action against Respondent Motor Vehicle Accident Indemnification Corporation is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

10/27/2023			<i>Mary V Rosado JSC</i>
DATE			HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>
			DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			NON-FINAL DISPOSITION
			GRANTED IN PART
			OTHER
			SUBMIT ORDER
			FIDUCIARY APPOINTMENT
			REFERENCE