Matter of Rental Claims Servs. v Cziment
2023 NY Slip Op 34379(U)
December 4, 2023
Supreme Court, Kings County
Docket Number: Index No. 523698/2022
Judge: Ingrid Joseph
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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 4th day of December, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of RENTAL CLAIMS SERVICES to Stay the Arbitration sought to be had by,

Petitioner,

-against-

MORDECHAI CZIMENT,

Respondent,

-against-

ANDREW M. JULES and GEICO GENERAL INSURANCE COMPANY,

Proposed Additional Respondents.

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Index No.: 523698/2022

DECISION AND ORDER

The following e-filed papers considered herein:

	NYSCEF Doc. Nos.
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Affirmation in Opposition/Exhibits Annexed.......................................	17-20
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Petitioner Rental Claim Services ("Petitioner") moves for an order (1) permanently staying the arbitration demanded by Respondent Mordechai Cziment ("Respondent"), or alternatively, (2) temporarily staying the arbitration until a framed issue hearing is conducted regarding the applicable coverage issues and discovery is conducted (Mot. Seq. No. 1).[1] Petitioner, a third-party claims administrator and not an insurer, contends that the owner of the vehicle is non-party EAN Holdings, LLC, a self-insured entity. Petitioner argues that Respondent filed the demand for arbitration against an incorrect party—ELCO Claims Rental Claims Services ("ELCO"), which is now known as Rental Claims Services. Respondent opposes

[1] Petitioner initially moved to add proposed additional respondents Andrew M. Jules and Geico General Insurance Company. This request was withdrawn in its reply after proof was submitted that the correct date of the accident was August 24, 2021, after Geico had already cancelled the policy issued to the second vehicle. Accordingly, any arguments made by the parties and/or proposed parties as to this request will not be addressed herein.

the petition on the grounds that he properly named and served ELCO and Petitioner did not timely file its application to stay the arbitration.

This action arises out of a two-vehicle accident that occurred on August 24, 2021, involving a rental vehicle operated by Respondent and owned by EAN Holdings, LLC ("EAN") and another vehicle whose driver fled the scene. The police report identified the second vehicle as a 2005 Jeep with New York license plate number GHJ1356. There is no viable argument that the Jeep was insured at the time of the accident because Geico cancelled its policy on the Jeep prior to the accident. The rental agreement signed by Respondent lists the owner as ELRAC, LLC[2] and contains a provision wherein Respondent acknowledges and consents to the mandatory arbitration agreement in the additional terms and conditions.

Petitioner contends that Respondent has no standing to pursue a claim against Petitioner, the third-party claims administrator for EAN, because (a) it is not an insurer, (b) it does not provide any form of coverage, and (c) it did not enter into any agreements with Respondent. In addition, Petitioner argues that EAN did not receive notice of Respondent's intent to pursue an uninsured motorist claim until April 14, 2022. Accordingly, Petitioner contends that the near year-long delay to provide notice is unreasonable. Since the demand for arbitration contained alleged material mistakes—namely listing the incorrect party and address—Petitioner argues that a petition to stay was not required to be filed within 20 days of notice. Alternatively, Petitioner agues that a temporarily stay should be issued because discovery is needed, such as physical examinations and an Examination Under Oath of Respondent.

In his opposition, Respondent contends that he first sent notice to Petitioner of his intention to file a claim under ELRAC, INC./Enterprise Rent-A-Car's policy through his attorneys' letters of representation on November 12, 2021. Thereafter, on January 4, 2022, Respondent received a letter from MedSource National indicating that Rental Claims Services had requested an independent medical examination. The MedSource letter listed 201 Dolson Avenue in Middletown as Petitioner's address. Respondent contends that this is the same address used to send correspondence and notices to Petitioner. Thereafter, Respondent asserts that his attorneys emailed additional notice to Petitioner on April 14, 2022 before ultimately filing its demand for arbitration on June 10, 2022. As to Petitioner's claim that it is not the correct insurer, Respondent contends that this is belied by Petitioner's conduct because it implicitly acknowledged that it was the correct insurer by processing Respondent's claims and scheduling Respondent's physical examinations. Respondent further contends that at no time prior to the filing of its petition did Petitioner

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[2] According to the ELRAC LLC's company snapshot on the Federal Motor Carrier Safety Administration's website, its "doing business as" name is "National & Enterprise & Alamo & EAN Holdings LLC" (*Company Snapshot*, Federal Motor Carrier Safety Administration, available at https://safer.fmcsa.dot.gov/query.asp?searchtype=ANY&query_type=queryCarrierSnapshot&query_param=USDOT&original_query_param=NAME&query_string=1707780&original_query_string=ELRAC%20LLC [last accessed Oct. 20, 2023]).

claim that it was not the correct insurer. With respect to Petitioner's request for discovery, Respondent alleges that he underwent a physical examination and acknowledged and rejected Petitioner's other discovery demands as improper.

In its reply, Petitioner contends that Respondent cannot confuse the entity which he dealt with concerning no-fault benefits with his obligation to serve its demand upon the insurer EAN. Moreover, Petitioner contends that the April 2022 letter to EAN was the first notice of Respondent's intent to pursue a claim. According to Petitioner, this eight-month delay is unreasonable.

The Court of Appeals has determined that the 20-day deadline to apply for a stay under CPLR 7503 (c) will not be rigidly adhered to in the absence of an agreement to arbitrate (*Matarasso v Cont'l Cas. Co.*, 56 NY2d 264, 267 [1982]). "If in fact the Petition was served on the wrong entity, all issues of delay and procedural error fall moot as does the need for a framed issue hearing and arbitration must be stayed, as [petitioner/third-party claims administrator] would not be party to the arbitration contract" (*In re ELCO Administrative Services v. Arias*, Sup Ct, Bronx County, May 15, 2013, Guzman, J., index No. 260422/2012); *see also ELCO Administrative Services v Brooks-Smith*, Supt Ct, Bronx County, Apr. 1, 2019, Franco, J., index No. 36304/2017E (permanently staying arbitration where third-party administrator was not the owner of the vehicle or the insurer). In *Arias* and *Brooks-Smith*, the petitioner argued that it was only a third-party claims administrator and not the insurer; therefore, it did not agree to or enter into any arbitration agreement with the respondent. These are the same arguments made by Petitioner here. The court in *Arias* granted a temporary stay to determine the relationship between the third-party claims administrator and the insurer. Here, however, the Court does not find that there are any issues of fact as to whether Petitioner is the insurer.[3]

Though the Court finds Petitioner's contention that EAN only received notice in April 2022 questionable, it would be improper to allow arbitration to proceed against a mere third-party claims administrator. The Court further finds that Respondent would not be prejudiced, as there is a six-year statute of limitation from the date of the accident to demand arbitration (*DeLuca v Motor Vehicle Acc. Indemnification Corp.*, 17 NY2d 76, 79 n 1 [1966]; *Jenkins v State Farm Ins. Co.*, 21 AD3d 529, 530 [2d Dept 2005]). Since the accident occurred on August 24, 2021, Respondent has time to file his demand for arbitration as against the correct entity.

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[3] In *Liberty Mut. Ins. Co. v Luna*, Academy Express LLC ("Academy"), a self-insured entity, was the owner of vehicle in which passengers sustained injuries (2007 NY Slip Op. 32528[U] [Sup Ct, NY County 2007]). Liberty Mutual Insurance Company ("Liberty") served as Academy's excess carrier and third-party administrator (*id.*). The court rejected the notion that Liberty's "participat[ion] in arranging independent medical examinations and in the management, payment and denial of claims from the accident in its capacity as third-party administrator . . . transform[ed] the terms of the excess policy of insurance between Liberty and Academy into one casting Liberty as Academy's primary carrier (*id.*).

Accordingly, it is hereby

ORDERED, that the petition (Mot. Seq. No. 1) is granted to the extent that the arbitration is permanently stayed.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.

HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice