

American Tr. Ins. Co. v Rubio

2024 NY Slip Op 30048(U)

January 3, 2024

Supreme Court, New York County

Docket Number: Index No. 651071/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

ANIBAL RUBIO,

Respondent.

TRINIDAD ARAUJO, STATE FARM MUTUAL AUTO
INSURANCE COMPANY, COUNTRY WIDE INSURANCE
COMPANY,

Proposed Additional Co Respondents

INDEX NO. 651071/2022

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 10, 11, 12, 13, 14, 15, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for STAY.

The petition to stay arbitration shall be determined at a framed issue hearing. Petitioner shall file a note of issue by January 24, 2024.

Background

In this proceeding, petitioner, which insured respondent’s vehicle, seeks to stay an arbitration commenced by respondent involving an accident that occurred on February 1, 2016. Respondent insists that his car was struck in the rear by a motor vehicle occupied by four people who fled from the car after the accident. He admits that the police were able to identify the registered owner of the vehicle from the license plate of the abandoned vehicle.

Petitioner claims it did an investigation into the “adverse” vehicle and found that it was insured under a policy issued by State Farm; it also found a second insurance policy from Country Wide. Petitioner admits that it found a disclaimer issued by State Farm in June 2016 in which State Farm disclaimed coverage on the ground that the vehicle was stolen on the date of loss.

Respondent demands benefits from petitioner under his uninsured motorist coverage and seeks arbitration. Petitioner insists that a framed issue hearing is necessary because there is a question regarding whether State Farm should cover the car claimed stolen. Petitioner also insists that respondent’s demand for uninsured motorist coverage is untimely as it received the demand for arbitration on February 14, 2022 even though the accident occurred on February 1, 2016.

Regarding the framed issue hearing, respondent emphasizes that the owner of the adverse vehicle (Ms. Araujo) testified at a case filed in Kings County that her car was stolen before the accident. In that matter, respondent sued Ms. Araujo concerning the subject accident. She claimed that she left the keys in the car with the doors unlocked and rushed into her residence to use the bathroom; she did not return to use the car until the next day and purportedly discovered that it was no longer there. The subject accident happened during the night (allegedly at 4 a.m.), after she left the car but before she claimed it was stolen.

With respect to the statute of limitations issue, respondent argues that the limitations period begins to run when it is discovered that the vehicle was uninsured. He insists that date was June 15, 2016, the date State Farm disclaimed coverage (*see* NYSCEF Doc. No. 29). This case was commenced in March 2022, within six years.

In reply, petitioner questions the efficacy of a letter issued after the accident concerning whether or not the vehicle was stolen. It insists that the issue of permissive use should be decided at a framed issue hearing.

Discussion

“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, 1003, 966 NYS2d 157 [2d Dept 2013]).

Here, clearly there are issues of fact relating to the permissive use of Ms. Araujo’s vehicle. That is, a framed issue hearing is required to assess proposed respondent’s claim (Ms. Araujo’s) claim that her car was stolen. As petitioner pointed out, she testified in the Kings County matter that she left her keys in the car (*see* NYSCEF Doc. No. 28 at 72), which raises issues relating to Vehicle and Traffic Law § 1210(a) (a provision prohibiting vehicle owners from leaving their keys in the car unless they are hidden from sight). Critically, this record is devoid as to where she left the keys. Ms. Araujo was not questioned at her deposition in the Kings County case about where, specifically, she left the keys and whether or not they were visible.

In any event, under these odd circumstances – where someone leaves a car unlocked in New York City with the keys in it claiming to have a bathroom emergency and then fails to return to the car promptly after using the bathroom- the Court cannot simply accept the fact that the vehicle was stolen without first ordering a framed issue hearing. It may be that she arranged to leave the car in that condition knowing someone would borrow it later that night, with her permission.

The question here is which insurer must step up, and petitioner is entitled to a hearing to determine whether the car was borrowed with permission at the time of the accident or stolen. If it was stolen, then petitioner must honor its uninsured motor vehicle coverage; if it was used or deemed used with permission at the time of the accident, then the “adverse” car’s insurer must step up. The criteria “at the time of the accident” is important; it is possible that the evidence will show that the use overnight (when the accident happened) was permissive but when it wasn’t returned as expected, it could have been considered stolen.

The Court rejects petitioner’s claim that respondent’s demand for arbitration is time barred. Respondent asserted that the limitations period began to run when State Farm issued the disclaimer letter in June 2016. And petitioner did not address this issue at all in reply. “Claims made under the uninsured motorist endorsement of automobile insurance policies are governed by the six-year statute of limitations applicable to contract actions. The claim accrues either when the accident occurred or when the allegedly offending vehicle thereafter becomes uninsured” (*Jenkins v State Farm Ins. Co.*, 21 AD3d 529, 530 [2d Dept 2005]). That makes the instant demand timely.

Accordingly, it is hereby

ORDERED that the petition to stay arbitration is granted to the extent that a trial is directed of the preliminary issues of the permissive use of the offending vehicle and insurance coverage, and the arbitration is stayed pending such trial; and it is further

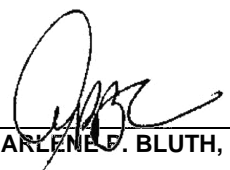
ORDERED that the Clerk of the General Clerk’s Office is directed to assign this matter to an appropriate Part for trial upon receipt of a copy of this order with notice of entry and the filing of a note of issue and a certificate of readiness and the payment of appropriate fees (the note of issue shall be filed by January 24, 2024); and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry within 20 days of entry upon the attorneys for the respondent and the arbitrator, and upon the Clerk of the Court and the Clerk of the General Clerk’s Office; and it is further

ORDERED that petitioner shall, within the aforesaid deadline, serve a copy of this order with notice of entry, together with copies of all papers previously served in the proceeding, upon TRINIDAD ARAUJO, STATE FARM MUTUAL AUTO INSURANCE COMPANY, COUNTRY WIDE INSURANCE COMPANY, who upon such service shall be added as a party respondents, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents and the Clerk of the Court and the Clerk of the General Clerk’s Office, upon service by petitioner on each of them of a copy of this order with notice of entry, shall mark their records to reflect the amendment; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].

<u>1/3/2024</u> DATE			 ARLENE F. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE