

Matter of Esurance Ins. Co. v Burdeynny

2024 NY Slip Op 30247(U)

January 17, 2024

Supreme Court, Kings County

Docket Number: Index No. 507491/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of January 2024

HONORABLE FRANCOIS A. RIVERA

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In the Matter of the Application of
ESURANCE INSURANCE COMPANY

Petitioner,

- against -

VOLODYMYR BURDEYNYY,

Respondent,

-and-

THE CITY OF NEW YORK and WIDMARC M. CHERY,

Respondents

DECISION & ORDER

Index No.: 507491/2022

Ms. 2

Oral Argument: 5/18/2023

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By notice of motion filed on January 20, 2023, under motion sequence number two, respondent Volodymyr Burdeynyy moves pursuant to CPLR 2221(d) for an order: (1) granting reargument of the Court's prior decision¹, and (2) upon reargument vacating and reversing the decision permanently staying Arbitration and permitting Volodymyr to proceed to arbitration.

BACKGROUND

On March 14, 2022, petitioner commenced the instant special proceeding by filing a notice of petition, petition, and annexed exhibits with the Kings County Clerk's office (KCCO).

¹ By order dated December 5, 2022, the petitioner Esurance Insurance Company's petition seeking a stay of respondent Volodymyr Burdeynyy's demand for SUM Arbitration was granted. The instant motion seeks reargument of this decision.

On April 8, 2022, respondent Volodymyr Burdeynyy filed an affirmation of counsel in opposition to the petition and copy of respondent's demand for arbitration.

On August 2, 2022, petitioner filed an affirmation of counsel and an affidavit from its claim representative in reply to respondent's opposition papers.

The petition alleges the following salient facts. The respondent Volodymyr Burdeynyy, served upon the petitioner a demand for SUM Arbitration, dated February 17, 2022, which was received by the Petitioner on or about February 25, 2022. The respondent submitted a copy of the police accident report for the motor vehicle accident (hereinafter the subject accident) in which the respondent was allegedly injured. The police report reflected that the subject accident occurred on August 2, 2019.

On December 12, 2019, the respondent commenced an action for damages for injuries by filing a summons and verified complaint with the KCCO under index number 527068/2019. The defendants in that action were The City of New York and Widmarc M. Chery, the owner and operator of the other vehicle involved in the subject accident.

According to the Complaint in that action, at the time of the subject accident, the respondent was a police officer, employed by the New York City Police Department, and was acting within the scope and furtherance of his duties as a police officer. Upon information and belief, on the date of the subject accident, August 2, 2019, the Petitioner had in force an insurance policy issued for the respondent's vehicle which contained provisions concerning the Uninsured Motorist endorsement. According to the respondent's demand for arbitration, it is claimed that the respondent sustained personal injuries because of the subject accident with an uninsured or underinsured vehicle.

LAW AND APPLICATION

In support of its petition, the petitioner previously contended, among other things, that the respondent was barred from seeking uninsured or underinsured motorist (hereinafter UM/coverage) because he is not eligible for it due to being involved in an accident while operating a police vehicle. The respondent claimed that the petition was untimely and that the respondent was not barred from seeking arbitration to pursue UM/coverage.

By order dated December 5, 2022, the Court granted the petitioner's petition to permanent stay um/sum arbitration. The Court found that the police vehicle operated by the respondent at the time of the subject accident is not a covered vehicle for uninsured motorist or underinsured motorist benefits applying the holding in (*Matter of Matter of State Farm Mut. Auto. Ins. Co. v Fitzgerald*, 25 NY3d 799 [2015]).

CPLR 2221(d) sets forth the procedure for making a motion affecting a prior order and states the following: (d) A motion for leave to reargue: 1. shall be identified specifically as such; 2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.

After reviewing the motion papers submitted and hearing the oral argument of the parties, the petitioner's motion for an order granting reargument of the Court's prior decision of December 5, 2022, and vacating the order is denied. The Court did not overlook or misapprehend any law, fact or argument contained in the petition. The Court simply disagrees with the petitioner's understanding of the Court of Appeal decision in *Matter of Matter of State*

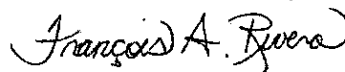
Farm Mut. Auto. Ins. Co. v Fitzgerald, 25 NY3d 799 [2015] and its application to the instant special proceeding.

CONCLUSION

The motion by respondent Volodymyr Burdeynny for order pursuant to CPLR 2221(d) for reargument of the Court's prior decision of December 5, 2022 and upon reargument vacating and reversing said decision is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.