

Matter of Progressive Advanced Ins. Co. v Ventura
2024 NY Slip Op 35672(U)
December 18, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 63146/2023
Judge: James F. Quinn
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INDEX No. 631416/2023SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 41 - SUFFOLK COUNTY**P R E S E N T :**Hon. JAMES F. QUINN
Acting Justice of the Supreme CourtMOT. DATE 09/18/2024
MOT. ADJ. DATE 12/17/2024

Mot. Seq. #003-MG

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In the Matter of the Application of the
PROGRESSIVE ADVANCED INSURANCE
COMPANY,

Petitioner,

- against -

To Stay the Arbitration sought to be had by

JOSUE I. VELIS VENTURA,

Respondent,

- and -

CANAL INSURANCE COMPANY, SHARK
LOGISTICS CORP., FREEDOM TRANS
CORP. and KENNETH L. JACOBS,Proposed Additional Respondents.
-----X**DECISION AND ORDER**

Upon the E-File document list numbered 58-76 and 79-81 read on the motion of the Petitioner Progressive Advanced Insurance Company ("Progressive") for an order pursuant to CPLR §1001 and §3025(b) for leave to add parties and amend the pleadings, without opposition, it is hereby

ORDERED, that the motion of Petitioner seeking leave to add parties and amend the pleadings, without opposition, is **granted**.

Petitioner alleges their insured Josue I. Velis Ventura was involved in an auto accident with a tractor-trailer August 8, 2023 in the parking lot of Simone Woods Road, near Expressway Drive North, Town of Islip, County of Suffolk, State of New York. Petitioner claims the tractor-trailer was registered to Shark Logistics Corp. and operated by Kenneth L. Jacobs, both Proposed Additional Respondents. As a result of extensive investigation Petitioner now seeks to add Unitrin Preferred Insurance Company and Freedom Transportation Corp. as Proposed Additional Respondents and amend the petition accordingly. Further, the petition as against Proposed Additional Respondents Canal Insurance Company and Wesco Insurance Company has been discontinued pursuant to a Stipulation of Partial Discontinuance dated September 27, 2024 and filed October 31, 2024 and as against Freedom Trans Corp. pursuant to a Stipulation of Partial Discontinuance dated and filed October 1, 2024.

CPLR §3025(b) provides that "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." "Leave to amend a pleading should be freely granted unless the amendment sought is palpably improper as a matter of law or unless prejudice or surprise results from the delay" (*Uliano v Entemann's, Inc.*, 148 A.D.2d 604, 605 [2d Dept 1989]; *see also Clark v Clark*, 93 AD3d 812, 941 NYS2d 192 [2d Dept. 2012]). No evidentiary showing of merit is required on a motion under CPLR §3025(b) (*see Lucido v Mancuso*, 49 Ad3d 220, 851 NYS2d 238 [2d Dept. 2008]). Whether to grant or deny leave to amend is committed to the court's discretion (*Edenwald Contracting Co., Inc. v City of New York*, 60 N.Y.2d 957, 959 [1983]).

Prejudice sufficient to defeat an amendment must show prejudice traceable not only to the new matter sought to be added but also to the fact that it is being added at a relatively late stage in the proceedings. (*See, Edenwald Contracting v City of New York*, 471 N.Y.S.2d 55, 60 N.Y.2d 957, 459 N.E.2d 164 (1983); *St. Paul Fire and Marine Ins. Co. v Town of Hempstead*, 291 AD2d 488, 738 N.Y.S.2d 226 [2d Dept. 2002]).

It is clear from the Court's review of all the papers presented on this application that Petitioner has met their burden to amend the petition. It is also clear from a review of the papers to the Court there is no surprise or prejudice to the other parties. Here, as there is no opposition to the application to amend the petition, that application is granted.

Accordingly, it is hereby

ORDERED, the Court deems the petition amended and filed as of the date of this Decision and Order; and it is further

ORDERED, Petitioner's request to amend the caption, without opposition, is hereby **granted**; and it is further

ORDERED, that the Clerk of the Court is directed to amend the caption as follows, and all future pleadings and papers will use the amended caption:

-----X
In the Matter of the Application of the
PROGRESSIVE ADVANCED INSURANCE
COMPANY,

Petitioner,

-against-

To Stay the Arbitration sought to be had by

JOSUE I. VELIS VENTURA,

Respondent,

- and -

SHARK LOGISTICS CORP., KENNETH L.
JACOBS, FREEDOM TRANSPORTATION
CORP. and UNITRIN PREFERRED
INSURANCE COMPANY,

Proposed Additional Respondents.

-----X

ORDERED, if applicable, the movant shall serve notice pursuant to CPLR §8019(c) upon the Clerk of the County of Suffolk within thirty (30) days from the date of the entry of this order; and it is further

ORDERED, all counsel shall appear **IN PERSON** for a Status Conference on **February 25, 2025 at 11:00am**, as scheduled.

The foregoing constitutes the **Decision and Order** of this Court.

Dated: December 18, 2024
Riverhead, New York


HON. JAMES F. QUINN, A.J.S.C.

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AAA Case Number: 01-23-0005-0669

_____ FINAL DISPOSITION

XX NON-FINAL DISPOSITION