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| <b>Matter of Hertz Vehs. LLC v Richardson</b>                                                                                                                                                                                  |
| 2025 NY Slip Op 35515(U)                                                                                                                                                                                                       |
| January 30, 2025                                                                                                                                                                                                               |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 61639/2024                                                                                                                                                                                            |
| Judge: Paul I. Marx                                                                                                                                                                                                            |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
HON. PAUL I. MARX, J.S.C.

To commence the statutory  
time period for appeals as of  
right (CPLR 5513 [a]), you  
are advised to serve a copy  
of this order, with notice of  
entry, upon all parties.

-----X  
In the Matter of the Application of the HERTZ  
VEHICLES LLC and ESIS CLAIMS,

Index No.: 61639/2024

Petitioners,

-against-

### DECISION AND ORDER

To Stay the Arbitration sought to be had by  
EQUILLA RICHARDSON,

Motion Sequence # 2

Respondent.

-----X

The papers filed electronically on NYSCEF numbered 11 through 27<sup>1</sup> were read on the Petition of HERTZ VEHICLES LLC and ESIS CLAIMS pursuant to CPLR § 7503, seeking to permanently stay Respondent EQUILLA RICHARDSON from proceeding at the American Arbitration Association against Petitioners (motion seq. #2).<sup>2</sup>

Upon the foregoing papers, it is ORDERED that the motions are disposed as follows.

### BACKGROUND

Petitioners Hertz Vehicles LLC and ESIS Claims (“Petitioners”) seek to stay an uninsured motorist arbitration demanded by Respondent Equilla Richardson (“Richardson” or “Respondent”) arising from an automobile accident that resulted in physical injuries. Richardson contends that while she was driving southbound on I87 in Bronx, NY, on February 26, 2023, at approximately 2:45 a.m., the vehicle she was operating was struck from behind by another vehicle which fled the scene. The rear impact, Richardson contends, caused her vehicle to spin out of control and collide with a roadway divider. Richardson seeks compensation under the uninsured

<sup>1</sup> The Court notes that counsel for both sides have not complied with the Part Rules which require exhibits to be uploaded separately and separately identified. The exhibits have simply been uploaded by exhibit number with no further identification.

<sup>2</sup> A prior application for the same relief was denied by the Court because Petitioners failed to serve Respondent or Respondent’s counsel with the papers. NYSCEF # 10.

motorist provision of a policy issued to or by Petitioners. In furtherance thereof, Respondent has filed an uninsured motorist arbitration demand which Petitioners seek to permanently enjoin.

Petitioners contend that Respondent is barred from proceeding with the arbitration because she did not (1) “report the accident to a municipal authority within 24 hours or as soon as practicable”, (2) “demonstrate physical contact with an unidentified vehicle pursuant to Insurance Law 5217”, and (3) “has not complied with conditions precedent”. NYSCEF #11,16.

Respondent answers Plaintiffs’ allegations asserting that (1) the Petition is untimely, (2) no law establishes reporting an accident to a municipal entity within 24 hours of occurrence as a condition precedent to uninsured arbitration, (3) whether there was contact with an uninsured vehicle is a factual issue that requires a hearing, and (4) Respondent was not provided with a copy of the relevant insurance policy so that she could determine what conditions precedent may exist within the policy. NYSCEF # 21.

Petitioners reply contending that the Petition was, in fact, timely, and agreeing that where there is an issue of fact regarding contact, a framed issue hearing is required. NYSCEF # 25.

## **DISCUSSION**

### *Timeliness*

Because the issue of timeliness may be dispositive of this Petition, the Court’s analysis begins there.

CPLR § 7503(c) provides;

c) Notice of intention to arbitrate. A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. Such notice or demand shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. *An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded.* Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or the notice of intention to arbitrate. Service of the application by mail shall be timely if such application is posted within the prescribed period. Any provision in an arbitration agreement or



arbitration rules which waives the right to apply for a stay of arbitration is hereby declared null and void. (emphasis added).

Respondent asserts that the Petition is untimely and must be dismissed because it was not made within twenty (20) days of the demand for arbitration. Respondent submits that her demand for arbitration was filed via Certified Mail, Return Receipt Requested on August 22, 2024, and was received by Petitioners on August 28, 2024. Respondent notes that the Notice of Petition, although filed via NYSCEF on September 13, 2024, is dated October 3, 2024. NYSCEF # 11. Respondent posits, using the date of the Notice of Petition (October 3, 2024), the same date it was received by Respondent's counsel, that the application for stay was made beyond the 20 days allotted by law. [It is 37 days from August 28, 2024, to October 3, 2024]. This, despite the actual filing of the Petition and Notice of Petition on September 13, 2024.

Petitioners respond to the assertion that the Petition is untimely by noting that 20 days after the date on which the demand was received (August 28, 2024) is September 17, 2024. In addition, Petitioner notes, without further amplification, that under Court Rule 22 NYCRR § 202.5-b(f)(2)(ii), service of an e filed document occurs simultaneously with filing. NYSCEF # 25, ¶5-7

The Court holds that the Petition was timely filed because it was filed within 20 days of receipt by Petitioners of a demand for arbitration. [It is 15 days from August 28, 2024, to September 13, 2024.] Accordingly, the portion of the Petition which seeks a stay of the arbitration based on untimely commencement is denied.

#### *Report to a Municipality*

Petitioners assert that Respondent's arbitration demand is also barred because Respondent did not report the underlying accident to a municipal entity within 24 hours of its occurrence. Petitioners submit that Respondent's presentation of an MV-104 which is uncertified and without proof of filing is insufficient to meet this alleged requirement. In support of their contention that report to a municipal entity is required, Petitioners point to *US Fire Ins Co. v Grieco*, 41 AD2d 716 [2<sup>nd</sup> Dept 1973] and *Davis v MVAIC*, 33 AD2d 663 [1<sup>st</sup> Dept 1969].

Respondent submits that there is no law that requires reporting an accident to a municipal entity as a condition precedent to arbitration. Respondent submits that the cases relied on by Petitioners do not support their position because the reporting requirement in those cases was imposed by the insurance policy under which the claim was being submitted. Further, Respondent

notes that Petitioners have not produced a copy of the subject insurance policy or any endorsement which imposes a reporting requirement.

The cases relied on by Petitioners to support the assertion that a report to a municipality is required as a condition precedent are inapposite. In those cases, *the insurance policy under which arbitration was sought contained a provision requiring such a report*. As described in *Davis, supra*, “[t]he issue is whether the accident was reported to the police within the 24-hour period pursuant to the New York Accident Indemnification Endorsement relative to hit-and-run automobiles. *Davis, supra* at 663. Similarly, in *US Fire*, the Court’s holding was that “[c]aimant failed to comply with the condition precedent to coverage under the uninsured motorist indorsement of his automobile policy which required that he, within 24 hours, report to the police the alleged hit-and-run incident which gave rise to his claim.” *US Fire, supra* at 341.

Here, Petitioners have not provided the underlying insurance policy. Therefore the Court cannot confirm whether the policy includes an endorsement requiring a report to a municipal entity. Thus, to the extent that Petitioners rely on an assertion that a report to a municipal entity is required, the Petition is denied.

#### Contact

Petitioners contend that the arbitration cannot proceed because there was no contact with an offending vehicle. Petitioners rely on photographs of Respondent’s vehicle depicting extensive damage to the front end and none readily discernible to the rear end of the vehicle to support their contention that Respondent’s claim of a hit and run driver striking her from the rear is false. NYSCEF # 19.

Respondent opposes this portion of the Petition by submitting her own affirmation in which she attests that while traveling southbound on I87 she was struck in the rear by another vehicle which fled the scene. NYSCEF # 22.

Insurance Law § 5217, applicable to “hit and run” accidents, provides:

The protection provided by this article shall not apply to any cause of action by a qualified person arising out of a motor vehicle accident occurring in this state against a person whose identity is unascertainable, *unless the bodily injury to the qualified person arose out of physical contact of the motor vehicle causing the injury with the qualified person or with a motor vehicle which the qualified person was occupying* (meaning in or upon or entering into or alighting from) at the time of the accident.

It is an essential element of a “hit and run” arbitration that there was physical injury which arose out of physical contact. In cases such as the one at bar, where physical contact is disputed, a hearing is required. *Allstate Ins. Co v Killakey*, 78 NY2d 325 [1991].

In fact, both parties submit that a hearing is required to determine if there was physical contact. See Petition NYSCEF # 16, ¶ 18-28 and Affirmation in Opposition NYSCEF # 21, ¶ 13.

### CONCLUSION

It is hereby ORDERED that the portion of the Petition which seeks to stay the arbitration based on alleged untimely commencement of this application for a stay is DENIED; and it is further

ORDERED that the portion of the Petition which seeks a stay of the arbitration predicated on the assertion that Respondent failed to report the accident to a municipal agency within 24 hours is DENIED; and it is further

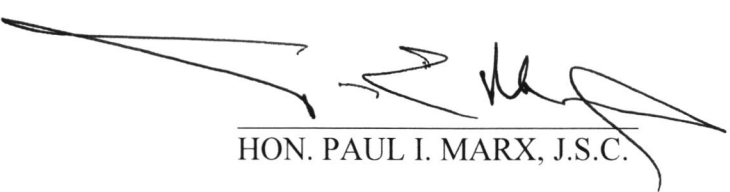
ORDERED that a framed issue hearing shall be held to determine if Respondent’s vehicle was struck by an offending vehicle and, therefore, Respondent is entitled to arbitration; and it is further

ORDERED that counsel shall appear before the undersigned on February 24, 2025, at 9:00 a.m.to schedule a date for the framed issue hearing provided for herein to be conducted.

The foregoing constitutes the Decision and Order of the Court.

Dated: January 30, 2025  
White Plains, New York

E N T E R



HON. PAUL I. MARX, J.S.C.