Geico Gen. Ins. Co. v Golden Riders Inc.
2025 NY Slip Op 35601(U)
January 13, 2025
Supreme Court, Nassau County
Docket Number: Index No. 601892/2024
Judge: Erica L. Prager
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: ERICA L. PRAGER, J.S.C.

---x

GEICO GENERAL INSURANCE COMPANY AS SUBROGEE OF KAVAUGHN ADAMS,

Plaintiff,

-against-

GOLDEN RIDERS INC. and NAM TRAN,

Defendants.

---x

IAS/TRIAL PART 15

Motion Seq.: 001
Submission Date: 7/16/24

Index No.: 601892/24

DECISION AND ORDER
X X X

Papers Considered:	**NYSCEF Doc. No.**
Supporting Papers..	4-9
Opposition Papers..	12-13
Reply Papers..	14

Relief Sought

The Defendants, GOLDEN RIDERS INC. and NAM TRAN move pursuant to CPLR §§ 3211(a)(2) and (5) to dismiss the Plaintiffs' complaint.

Background

This is a subrogation action in which plaintiff GEICO GENERAL INSURANCE COMPANY AS SUBROGEE OF KAVAUGHN ADAMS ("GEICO" or "Plaintiff") seeks to recoup Personal Injury Protection benefits paid by GEICO on behalf of its insured KAVAUGHN ADAMS ("ADAMS") in connection with losses allegedly sustained in an automobile accident between the GEICO insured vehicle and a vehicle owned by defendant GOLDEN RIDERS INC. and operated by defendant NAM TRAN (collectively, "Defendants"). The underlying facts are taken from the parties' submissions, and are undisputed except where otherwise noted.

Plaintiff commenced the instant action on February 1, 2024 with the filing of the Summons and Complaint. The Complaint alleges that on February 12, 2022, ADAMS was injured in an automobile accident with Defendants' vehicle at the intersection of Glen Cove Road and Jericho Turnpike in Nassau County, New York, due to the negligence of Defendants in the ownership, operation, maintenance and control of their vehicle. The Defendants' vehicle bore Masssachusetts license plates and was insured by non-party, Pilgrim Insurance Company ("Pilgrim").

The Complaint alleges further that GEICO paid on behalf of ADAMS, pursuant to the Personal Injury Property provisions of the applicable GEICO policy, the total sum of $35,722.69 for medical bills and/or economic loss ADAMS sustained as result of the accident. Plaintiff seeks recovery of said amount from the tortfeasors allegedly responsible for the accident. The Complaint alleges that Defendants are not "covered persons" as defined in Section 5102(j) of the Insurance Law.

In lieu of an answer, Defendants filed the instant motion to dismiss pursuant to CPLR §§ 3211(a)(2) and (5). Defendants assert that on July 28, 2022, GEICO filed a loss transfer claim against Pilgrim with Arbitration Forums, Inc. The matter proceeded to arbitration, and on September 12, 2022, an Arbitration Decision was rendered in which no damages were awarded to GEICO (the "Arbitration Decision"). The Arbitrator stated:

> "The evidence was reviewed. Geico provided a police report of a hit and run collision listing a tag number per photo that matches with the Pilgrim vehicle. There is no police investigation nor any witnesses provided.
>
> Geico's evidence of a one-line statement saying "bus sideswept me" lacks any detail regarding how the collision occurred, the points of impact between the vehicles etc. Geico provided photos of the rear of the [Geico insured] vehicle with its tag number visible. The photo does not support a bus visible or prove involvement or liability of the Pilgrim vehicle driver.
>
> There is insufficient evidence to support Pilgrim's involvement or prove liability rest[s] with their driver. No award against Pilgrim is appropriate for any damage to the Geico vehicle. Geico did not meet the burden of proof."

Defendants now seek to dismiss the instant action on two grounds: First, pursuant to Section 5105 of New York's Comprehensive Motor Vehicle Reparations Act ("No-Fault Law"), an insurer is required to submit claims for reimbursement of first party benefits to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent. See Insurance Law §5015(b); 11 NYCRR 65-4.11; accordingly, Defendants argue, this Court lacks jurisdiction to determine the instant subrogation claim. Second, the Arbitration Decision includes a determination of non-liability on the part of the Defendants. In Defendants' view, plaintiff cannot now assert a negligence claim against the Defendants, having brought the matter to arbitration resulting in a finding of no fault.

In opposition, Plaintiff challenges each of the Defendants' arguments. With respect to Defendants' jurisdictional argument, Plaintiff explains that it is seeking to recoup first-party No-Fault benefits paid to its insured through subrogation, as provided by Insurance Law §5104(b), and not through the "loss transfer" provisions of Insurance Law §5105(a). Insurance Law §5104(b), and not §5105(a), is the applicable provision governing recoupment of such payments in this case, because the Defendants are not "covered persons" as defined by Insurance Law §5102(j). Defendants are not "covered persons" because their insurance carrier, Pilgrim, is not authorized to issue automobile policies in New York. Plaintiff attaches a print out from the Department of Financial Services which does not list Pilgrim among the insurers authorized to issue policies in New York.

Plaintiff asserts that the two-year statutory waiting period set forth in Insurance Law §5104(b) has expired, and it is now authorized to proceed pursuant to that section. Insofar as Plaintiff is not proceeding through Insurance Law §5105(a), Plaintiff argues, it is not subject to the mandatory arbitration provisions of Insurance Law §5105(b). Thus, the Supreme Court has jurisdiction to hear and determine this subrogation claim.

With respect to the preclusive effect of the Arbitration Decision, Plaintiff asserts that the prior arbitration pertained to a claim for reimbursement of monies paid to repair its insured's vehicle. It was brought through the voluntary Property Damage Program of Arbitration Forums. Plaintiff argues that the Arbitrator did not, in fact, find an absence of fault on the part of Defendants. Rather, the Arbitrator found that GEICO, as Applicant, had not met its burden of proof; that is, it did not provide sufficient evidence of the involvement of Defendants' vehicle in the accident. Plaintiff notes that a personal injury action arising out of the same accident, entitled *Kavanaugh Adams v. Nam Tran and Golden Riders Inc.*, is presently pending under Index no. 606327/2022 in the Supreme Court of Nassau County. If definitive proof of non-liability were available, Plaintiff surmises, a motion to dismiss would have been filed in that action. In Plaintiff's view, the issue of Defendants' fault was not necessarily decided in Defendant's favor, and thus, the Arbitration Decision has no preclusive effect on the instant litigation.

In reply, Defendants do not address, and thus appear to have abandoned, their jurisdictional argument. Instead, they rely upon their contention that the Arbitration Decision was binding upon GEICO, as GEICO never sought to appeal or vacate it. In Defendants' view, Plaintiff should not be permitted a "second bite of the apple" to relitigate the issue of fault, arising out of the same accident, which was decided against the Plaintiff and in favor of the Defendants in the Arbitration Decision.

Discussion

Insurance Law §5104(b) provides:

> "In any action by or on behalf of a covered person, against a non-covered person, where damages for personal injuries arising out of the use or operation of a motor vehicle or a motorcycle may be recovered, an insurer which paid or is liable for first party benefits on account of such injuries has a lien against any recovery to the extent of benefits paid or payable by it to the covered person. No such action may be compromised by the covered person except with the written consent of the insurer, or with the approval of the court, or where the amount of such settlement exceeds fifty thousand dollars. The failure of such person to commence such action within two years after accrual gives the insurer a cause of action for the amount of first party benefits paid or payable against any person who may be liable to the covered person for his personal injuries. The insurer's cause of action shall be in addition to the cause of action of the covered person except that in any action subsequently commenced by the covered person for such injuries, the amount of his basic economic loss shall not be recoverable." N.Y. Ins. Law § 5104 (McKinney).

Under the No Fault scheme, an insurer has a limited right to commence an action to recover first-party benefits which it has paid or is obligated to pay. "That right arises only where a covered person has, but does not avail himself of, a right of action to recover damages for personal injuries against a non-covered person." *Country-Wide Ins. Co. v. 3-M Production Sales*, 96 A.D.2d 569 (2d Dept. 1983). That is, there are two essential elements of an insurer's right to recoup first-party benefits under Insurance Law §5104(b). First, the person from whom such recoupment is sought must be a "noncovered" person. See *Country-Wide v 3-M*, 96 AD2d at 569-570. Second, the insured must have failed to commence a lawsuit on his or her own behalf for personal injuries arising from the accident, within the two years following accrual of the claim. See *Fowler v. Pebble Hill Bldg. Corp.*, 120 A.D.2d 486 (2d Dept. 1986). See also *Utica Mut. Ins. Co. v. Lynton*, 31 Misc.3d 804 (Dist. Ct., Nassau Cty., 2011). If the insured has commenced a personal injury action within the statutory two-year period, then the insurer has only a lien against any recovery by its insured from the noncovered person. It may not maintain a direct action against the alleged tort-feasors to recover these benefits. *Fowler*, 120 A.D.2d at 487; *Utica Mut. v. Lynton*, 31 Misc.3d at 811-812.

At bar, Plaintiff's reliance on Insurance Law §5104(b) to sustain its subrogation claim is unavailing. Even assuming that Defendants are noncovered persons, it is undisputed (and a matter of public record) that Plaintiff's insured commenced a personal injury action against Defendants within the two year statutory period following the accident. (ADAMS' action was commenced on May 12, 2022, only three months following the subject accident.) Accordingly, Plaintiff has no cause of action to recover first-party benefits paid or payable to ADAMS under Insurance Law §5104(b). Its rights are limited to the assertion of a lien against any recovery obtained by ADAMS in the personal injury action. See *Fowler*, supra.

In view of the foregoing, the Court need not consider the preclusive effect of the Arbitration Decision.

Conclusion

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein.

Based upon the foregoing, it is

ORDERED, that Defendants' motion to dismiss is ***granted.***

Any requests for relief not specifically addressed herein are ***denied.***

This constitutes the Decision and Order of this Court.

Dated: January 13, 2025
Mineola, NY, 11501

E N T E R:

HON. ERICA L. PRAGER, J.S.C.

ENTERED
Jan 17 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE

F:\DECISIONS 2025\GEICO v GOLDEN RIDERS 601892-24 (001).wpd

[* 5]