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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ROBERT E. TORRES JUDGE PART 29
Justice

Index Number 106795/2011
STATE FARM MUTUAL AUTOMOBILE
vs
DIXON, JOHNATHAN Z.
Compel or Stay Arbitration

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 01

The following papers, numbered 1 to ____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2, 3
Replying Affidavits _____ | No(s). 4, 5

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the attached decision.

This Constitutes the Decision and Order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 7/23/2012

_____, J.S.C.
ROBERT E. TORRES
JUDGE

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 29

In the Matter of the Petition of
STATE FARM MUTUAL INSURANCE COMPANY,

Petitioner,

-against-

For an Order Staying the Arbitration attempted to be had by JOHNATHAN Z. DIXON and JOSEPH DIXON, an Infant by his Mother and Natural Guardian, JUDITH DIXON,

Respondent(s),

and

MARILU BARBOSA, RAFAEL GONZALEZ and TITAN INDEMNITY COMPANY,

Proposed Additional Co-Respondents.

INDEX NUMBER:106795/2011

Present:
HON. **ROBERT E. TORRES**

Petitioner moves for an Order pursuant to C.P.L.R. § 7503(c), permanently staying the arbitration sought by the Respondents on the grounds that Respondents have not established that the offending vehicle was, in fact, uninsured; or in the alternative, scheduling a framed issue hearing at which the issue of insurance may be determined; or, alternatively, temporarily staying the instant matter and permitting the Petitioner to conduct discovery in aid of arbitration. Respondents submitted written opposition and also requested a frame issue hearing to the issue of insurance. Proposed Additional Respondent Titan Indemnity Company submitted written opposition requesting this Court to deny the portion the petition seeking to add it as a proposed additional respondent. By decision dated November 21, 2011, this Court granted a frame issue hearing and directed the parties to appear on January 11, 2012. The matter was subsequently adjourned to January 25, 2012.[1] The motion to add the additional respondents is hereby granted.

[1]On January 25, 2012, the parties appeared and informed the Court they wanted the matter submitted and decided on the papers. The Court gave the parties additional time to submit any papers and the petition was thereafter submitted on March 8, 2012.

Respondents allegedly sustained personal injuries when a motor vehicle owned by proposed additional respondent and Pennsylvania resident, Marilu Barbosa; insured by proposed additional respondent TITAN and driven by proposed additional respondent Rafael Gonzalez, ran the red light causing a collision. It is unconverted that Barbosa gave Gonzalez permission to use her motor vehicle at the time of said accident. Titan denied respondents' claims because the driver was explicitly excluded from coverage by the provisions of Titan Indemnity, a permissible exclusion under Pennsylvania law.

Petitioner argues that New York Insurance Law §5107(a) mandates that, TITAN, an insurer authorized to transact business in New York, provide minimum New York required liability insurance coverage for all permissive users of their insured vehicle. In support of this argument, petitioner submits an Applicant Summary statement of the Pennsylvania Department of Transportation which shows a policy was issued to Barbosa with a policy period of June 5, 2010 through June 5, 2011.[2] Petitioner also argues that V.T.L.§ 388 provides a presumption that a motor vehicle is operated with consent of its owner.

While TITAN acknowledges that a policy was issued to Barbosa for the aforementioned period and that Barbosa gave Gonzalez permission to use her vehicle, it argues that there was no coverage on the date of the subject accident because Gonzalez was not a listed driver on Barbosa's insurance and therefore, explicitly excluded from coverage. In support of this argument, TITAN submits a certified copy of the Barbosa policy which shows the aforementioned exclusion on the declaration page.[3]

In reply, petitioner argues that even if the purported exclusion of TITAN's policy existed and were applicable, said exclusion is in violation of New York's financial security statute and cannot be enforced. Specifically, petitioner contends that TITAN is required to satisfy New York's financial security requirements because it is a New York authorized insurer and the subject accident occurred in New York State.

TITAN maintains that it does not have to provide insurance for the subject accident because the subject policy was contracted in Pennsylvania with a Pennsylvania resident. As such, TITAN argues that when

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[2] See Exhibit D of the Notice of Petition.

[3] See Exhibit A of the Affirmation in Opposition.

interpreting the Barbosa policy, Pennsylvania law applies and not New York law. TITAN does not deny that it is a New York authorized insurer and remains silent on the issue of satisfying New York's financial security requirements.

TITAN's policy contains a "Financial Responsibility" clause which provides, in pertinent part that: "1.We will adjust this policy to comply with the financial responsibility law of any state or province which requires higher liability limits than those provided by this policy. 2. With the kinds and limits of coverage required of nonresidents by any compulsory motor vehicle insurance law, or similar law. ..... When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by law. The insured agrees to reimburse us for any payment which we would have not have been obligated to make under the terms of this policy except for the agreement outlined in this paragraph."[4]

The Court concludes that pursuant to the language of TITAN's "Financial Responsibility" clause, the Barbosa automobile can not be considered uninsured. While courts have held that insurance policies, like all contracts, should be enforced according to their terms, they have also ruled that policies will not be enforced if prohibited by public policy, statute or rule. See, Liberty Mutual Insurance Company v. Aetna Casualty & Surety Company, 168 A.D.2d 121, 571 N.Y.S.2d 735 (2nd Dept. 1991). Although the driver of the offending vehicle was explicitly excluded from coverage by the provisions of TITAN's insurance policy and said exclusion is permissible under Pennsylvania law, it is well settled that a nonresident operator of a foreign vehicle may not drive upon the public highways of New York State with complete immunity from its financial security laws. TITAN's "Financial Responsibility" clause makes it fair and equitable to deem it to be in compliance and conformity with New York law. See, Matter of General Acc. Ins. Co. v. Loi Tran, 246 A.D.2d 543, 667 N.Y.S.2d 417 (2nd dept. 1998). Notably, TITAN has never negated that it is an "authorized insurer" in New York State and must therefore satisfy New York's financial security requirements. See, New York Insurance Law § 5107(a). As such, the offending vehicle in the subject accident is deemed to be covered by TITAN's insurance policy.

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[4] See, Exhibit A of the Affirmation in Opposition, certified copy of the Barbosa policy, page 6.

In a proceeding in which an insurer is seeking a stay of uninsured motorist arbitration, the petitioning insurer "bears the initial burden of proving that the offending vehicle was in fact insured at the time of the accident." Matter of Eagle Insurance Company v. Tichman, 185 A.D.2d 884, 885 (2nd Dept. 1992). In other words the petitioning insurer must establish a prima facie case of coverage for the adverse or offending vehicle.

The Court finds that petitioner has met its burden.

Accordingly, petitioner's application for a permanent stay of the uninsured motorist arbitration is granted.

This shall constitute the decision and order of this Court.

Dated: July 23, 2012

Hon. Robert E. Torres

ROBERT E. TORRES
JUDGE

FILED
JUL 27 2012
NEW YORK
COUNTY CLERK'S OFFICE