

Matter of Hartford Cas. Ins. Co. v Helms
2015 NY Slip Op 32275(U)
November 30, 2015
Supreme Court, New York County
Docket Number: 653267/15
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

HARTFORD CASUALTY INSURANCE COMPANY,

Petitioner,

Index No. 653267/15

-against-

DECISION/ORDER

For an Order Staying the Uninsured Motorists
Arbitration Demanded by LISA J. HELMS,

Respondent,

-and-

STATE FARM FIRE AND CASUALTY COMPANY
And JONATHAN DURAN,

Proposed Additional Respondents.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmation in Opposition.....	2,3
Replying Affidavits.....	4
Exhibits.....	5

Petitioner Hartford Casualty Insurance Company ("Hartford") moves for an Order (1) pursuant to CPLR § 7503(b) permanently staying the arbitration demanded by respondent Lisa J. Helms ("Helms"); or, in the alternative, (2) pursuant to CPLR § 7502 temporarily staying the arbitration pending a hearing to determine if insurance coverage existed for the vehicle at issue in the arbitration and joining the proposed additional respondents State Farm Fire and Casualty Company ("State Farm") and Jonathan Duran ("Duran"). Finally, in the event a stay is not

otherwise granted, Hartford seeks to temporarily stay the arbitration so that it may obtain discovery from respondents. Hartford's motion is resolved to the extent set forth below.

The instant action arises from a motor vehicle accident that occurred on August 2, 2014 (the "Accident"). On said date, a vehicle insured by petitioner and which respondent Helms was driving collided with a vehicle owned and operated by proposed additional respondent Duran and allegedly insured by proposed additional respondent State Farm (the "offending vehicle"). Pursuant to the police accident report, Duran made an admission that he lost control of his vehicle and drove it over the median, entering the opposing lane and causing the Accident. Further, the police accident report sets forth New York Insurance Code "327" for the vehicle Duran was driving, which is the Department of Motor Vehicles ("DMV") code assigned to State Farm.

In or around September 2015, respondent Helms filed a demand for arbitration (the "Arbitration") seeking uninsured motorist benefits from petitioner for the Accident pursuant to the policy issued by petitioner. Hartford now moves for an Order (1) pursuant to CPLR § 7503(b) permanently staying the Arbitration; or, in the alternative, (2) temporarily staying the Arbitration pending a hearing, joining Duran and State Farm, to determine if insurance coverage existed for the offending vehicle. Finally, in the event a stay is not otherwise granted, Hartford seeks to temporarily stay the arbitration so that it may obtain discovery from respondents.

An insurance carrier seeking to stay the arbitration of an uninsured motorist claim has the burden of demonstrating that the offending vehicle was actually insured at the time of the accident at issue. *Matter of Allstate Ins. Co. v. Holmes*, 173 A.D.2d 260 (1st Dept 1991). Indeed, once it is shown by a DMV registration record or a police report that a carrier issued a

policy of insurance to a certain vehicle, the burden shifts to the carrier to demonstrate that it never issued a policy or that it properly cancelled the policy or validly disclaimed coverage. *See AutoOne Ins. Co. v. Hutchinson*, 71 A.D.3d 1011 (2d Dept 2010). Additionally, in order to be entitled to a hearing, the petitioner seeking to stay the arbitration has the "burden of establishing the existence of evidentiary facts, sufficient to conclude that there is a genuine preliminary issue which requires a trial and justifies a stay." *National Grange Mutual Ins. Co.*, 111 A.D.2d at 700. If issues of fact exist, the court must hold a hearing before it can decide whether the arbitration should proceed or be stayed. *See Country-Wide Ins. Co. v. Leff*, 78 A.D.2d 830 (1st Dept 1980). Where no issue of fact exists as to whether the offending vehicle was uninsured, no hearing is necessary and the stay will be denied. *See Application of Country-Wile Ins. Co. v. Manning*, 96 A.D.2d 471 (1st Dept 1983); *see also Application of Amica Mut. Ins. Co. v. Reaves*, 70 A.D.2d 811(1st Dept 1979).

In the instant case, petitioner's application for a temporary stay of the Arbitration pending a hearing is granted as there are issues of fact as to whether State Farm canceled the policy it issued to Duran insuring the offending vehicle and thus, whether the offending vehicle was uninsured at the time of the Accident. Petitioner made a *prima facie* showing that the offending vehicle was insured by State Farm through the submission of a police accident report containing the vehicle's insurance code. However, in response, State Farm has submitted evidence that it cancelled the insurance policy issued to the offending vehicle prior to the Accident. Specifically, State Farm submitted a notice of policy cancellation that it mailed to Duran, which states that "[w]e have not received payments required to keep the policy in force. In accordance with the cancellation provisions, your policy identified in this notice is hereby canceled effective

12:01 A.M. standard time on the cancellation date specified due to non-payment of premium. No further notice will be sent to you.” Further, the notice specifies that the cancellation date is April 6, 2014. Additionally, State Farm submitted proof that the notice of cancellation was mailed to Duran. However, this court finds that a hearing must be conducted as this court cannot determine as a matter of law whether the policy issued to Duran was actually cancelled. As an initial matter, the court cannot determine as a matter of law that the cancellation of the policy complies with Vehicle and Traffic Law § 313, which requires that, *inter alia*, a policy cancellation have a certain type size and provide certain notice. However, even if the court could make such a determination, there exists an issue of fact as to whether the cancellation of the policy was rescinded by State Farm prior to the Accident. Specifically, the Insurance Activity Expansion provided by both petitioner and State Farm indicates that the notice of cancellation of the policy issued to Duran was filed on May 2, 2014. However, a subsequent entry on June 5, 2014 states “rescind electronic cancel eff date: 04/06/2014,” which could mean that coverage was reinstated *prior* to the Accident. As the court cannot determine, as a matter of law, whether the policy was cancelled or whether the cancellation of the policy was rescinded and coverage reinstated, a hearing must be conducted.

Finally, in the event it is determined that respondents have a valid uninsured motorist claim, the petitioner is entitled to authorizations for respondents’ no-fault files, all relevant medical and employment records and to have the respondents submit to a physical examination and an examination under oath. Accordingly, it is hereby

ORDERED that the Arbitration herein be temporarily stayed pending the outcome of a hearing; and it is further

ORDERED that petitioner is hereby granted leave to add the proposed additional

respondents State Farm and Duran; and it is further

ORDERED that this matter be set down for a hearing before a Special Referee who shall hear and report unless the parties agree that the Special Referee may hear and determine.

Within thirty (30) days from the date of this order, counsel for petitioner shall serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date. This constitutes the decision and order of the court.

Dated: 11/30/15

Enter: _____



J.S.C.

CYNTHIA S. KERN
J.S.C.