

**Singer v Arif**

2017 NY Slip Op 30371(U)

February 17, 2017

Supreme Court, New York County

Docket Number: 153574/2014

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

CATHERINE SWEENEY SINGER and WILLIAM  
M. SINGER,

Index No.: 153574/2014

Plaintiffs,

DECISION/ORDER

-against-

MUHAMMAD ARIF, EDWARDS TRANS CORP,  
YELLOW CAB SLS JET MANAGEMENT,

Defendants.

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

Papers	Numbered
Plaintiffs' Letter Brief	<u>1</u>
Defendants' Affirmation in Opposition	<u>2</u>
Plaintiffs' Reply Letter Brief	<u>3</u>

***ERIKA M. EDWARDS, J.:***

Plaintiffs Catherine Sweeney Singer and William M. Singer ("Plaintiffs") brought this action against Defendants Muhammad Arif ("Arif"), Edwards Trans. Corp. ("Edwards") and Yellow Cab SLS Jet Management ("Yellow Cab") (collectively "Defendants") seeking to recover damages for injuries Plaintiff Catherine Sweeney Singer sustained when she was struck by a taxi cab while crossing the street on March 24, 2014. The taxi cab was operated by Defendant Arif and owned by Defendant Edwards. Defendants Arif and Edwards appeared, but Defendant Yellow Cab defaulted. Defendants Arif and Edwards are insured by Fiduciary Insurance Company of America ("FICA") with a \$100,000 policy limit.

On June 30, 2016, the court granted Plaintiffs' motion for summary judgment as to liability against Defendants. The order was entered on July 1, 2016, and Plaintiff served Defendants with notice of entry on July 5, 2016.

During settlement discussions, Plaintiff demanded the full amount of the policy with interest from July 1, 2016, the date when liability was imposed on Defendants. Defendants offered to settle for \$100,000 on the eve of trial on January 6, 2017, but refused to pay interest and required Plaintiffs to sign a general release with a hold harmless agreement in favor of Defendants, FICA and defense counsel as to all outstanding medical liens. Plaintiff refused to sign such an agreement and continued to demand the interest. Defendants' considered Plaintiffs' demand to be in excess of the policy limits and requested an adjournment. The court granted Defendants' request and adjourned the trial to begin on March 8, 2017.

The court asked the parties to submit letter briefs to discuss the two outstanding issues in dispute so a decision could be rendered prior to jury selection. The parties complied and appeared for oral argument earlier today on February 17, 2017.

Here, the court addresses the following two issues: 1) whether non-party FICA is responsible for tender of monies in excess of its policy limit of \$100,000, including interest from July 1, 2016, and 2) whether a hold harmless provision is a necessary pre-condition to any negotiated resolution of this matter.

Upon review of the arguments made by both parties, the facts of the case and the applicable law, the court rules that 1) Plaintiffs are entitled to prejudgment interest from July 1, 2016, but the court cannot determine whether FICA is responsible for paying such interest in excess of its policy limit without reviewing the terms set forth in FICA's insurance policy with Defendants and 2) a hold harmless provision of this nature for medical liens is not required as a pre-condition to any settlement in this matter as the parties are free to attempt to negotiate alternative provisions which are acceptable to their clients.

As Plaintiffs correctly noted, Plaintiffs are statutorily entitled to prejudgment interest as of July 1, 2016, the date liability was established, pursuant to CPLR 5002 (*Diane v Ricale Taxi, Inc.*, 26 AD3d 232, 233 [1<sup>st</sup> Dept 2006]). Plaintiffs are statutorily entitled to interest and Plaintiffs' counsel repeatedly put Defense counsel on notice of Plaintiffs' demand for interest. Such interest continues to run as Defendants' purported tender was simply an offer conditioned on Plaintiffs waiving prejudgment interest and signing the hold harmless agreement. This offer was not a valid tender sufficient to stop the accrual of interest since it contained certain conditions. Whether the parties agree to settle this matter for the full amount of the policy or whether Plaintiffs obtain a judgment against Defendants in excess of the policy limit after verdict, Plaintiffs are entitled to prejudgment interest from July 1, 2016.

At this point, the court is not persuaded by Plaintiffs' arguments of bad faith. Since there is no additional insurance coverage, whether FICA is responsible for paying the interest on a \$100,000 settlement or whether Defendants are responsible largely depends on the language in their policy (*see Ragins v Hospitals Ins. Co., Inc.*, 22 NY3d 1019 [2013] [excess insurer was required to pay interest in excess of the primary insurance policy limit because of the plain language in the policies and because the interest was part of an amended judgment and did not accrue until after the policy had been exhausted]).

Courts have held that interest is not a penalty, but it is the cost of being able to use another person's money for a particular period of time (*Love v State*, 78 NY2d 540, 544 [1991]). Since FICA had the benefit of the use of its money up to \$100,000, FICA received the benefit and not Defendants. However, a determination about whether FICA or Defendants are required to pay the interest in excess of the policy limit is a contractual dispute between those parties and not before the court at this time. It may have to be resolved in another proceeding.

However, as always, the court is available to assist the parties in resolving all pretrial issues and will continue to do so as needed. Therefore, as mentioned during the conference, Defendants are directed to provide a copy of FICA's relevant insurance policy to the court and Plaintiff's counsel by Tuesday, February 21, 2017, at 5:00 p.m. and the parties are directed to begin the trial with jury selection on March 8, 2017, at 9:30 a.m.

Accordingly, it is hereby

**ORDERED** that Plaintiffs are entitled to prejudgment interest on a settlement amount in excess of the insurance policy limit of \$100,000 and such interest continues to accrue from July 1, 2016; and it is further

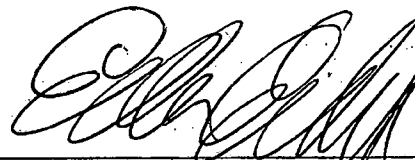
**ORDERED** that Defendants are directed to provide a copy of FICA's relevant insurance policy to the court and Plaintiff's counsel via email on or before Tuesday, February 21, 2017, at 5:00 p.m.; and it is further

**ORDERED** that a hold harmless provision in favor of Defendants, the insurer and defense counsel is not required as a pre-condition to any settlement in this matter; and it is further

**ORDERED** that the parties are directed to appear for trial and begin jury selection on March 8, 2017, at 9:30 a.m.

This constitutes the decision and order of the court.

Date: February 17, 2017



HON. ERIKA M. EDWARDS JSC