Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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In the Matter of the Application for a Stay of Arbitration of General Assurance Co.,

Petitioner,

-against-

Leslaw Grodzki,

Respondent,

and

Timothy Braddock and Travelers Indemnity Company,

Proposed Additional Respondents.

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Index No.: 3636/13
Motion Date: 5/3/13
Motion Cal. No.: 42
Motion Seq. No.: 2

The following papers numbered 1 to 14 read on this motion for an order granting dismissing the Respondent's arbitration demand or in the alternative temporarily staying the arbitration pending a Framed Issue Hearing.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9
Amended Affirmation in Opposition.....	10 - 12
Reply Affirmation.....	13 - 14

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

General Assurance Co., ("petitioner") moves by Order to Show Cause for an order dismissing the respondent's arbitration demand or in the alternative for an order staying the arbitration.

Facts

The underlying incident involves a motor vehicle accident that occurred on August 22, 2003, between Timothy K. Braddock ("Braddock") and Leslaw Grodzki ("Grodzki"). As a result of the incident Grodzki allegedly suffered person injuries. Petitioner was the auto insurer of Grodzki at the time of the motor vehicle accident. Braddock's insurance status is disputed as Travelers Indemnity Company ("Travelers") contends it canceled its insurance policy with Braddock but petitioner disputes this because the Claims Inquiry Report and policy report depict Travelers as Braddock's insurer.

The underlying action was commenced on August 9, 2006, via Summons and Verified Complaint. On July 6, 2010, Grodski was granted summary judgment in the amount of $275,000. On February 7, 2011, the Court filed an Order, after Grodski informed the court the July 6th order was not in the Court file, dictating a copy of the order be served to various parties and requiring the plaintiff to file its note of issue by March 4, 2011, which it did.

On April 3, 2009, Grodzki filed a Demand for Arbitration which was received by petitioner on April 10, 2009. The arbitration hearing was adjourned numerous times, and was calendared for March 11, 2013, at which point the Order to Show Cause, dated February 21, 2013, was filed by petitioner. The original request for arbitration was served in April 2009, and this petition was served close to 3 years.

General Assurance Co.'s Order to Show Cause requesting a stay of arbitration is denied, as more fully set forth below.

Discussion

First, petitioner's request that this Court ignore the Proposed Additional Respondents' affirmations is without merit. (*See Utica Mut. Ins. Co. v. Colon*, 25 A.D. 3d 617 [2nd Dept. 2006]; *See Also Chubb Group of Ins. Carriers v. DePalma*, 31 A.D. 3d 443 [2nd Dept. 2006]; Mercury *Ins. Group v. Ocana*, 46 A.D. 3d 561 [2nd Dept. 2007].) According to CPLR §7503 (c) a motion to stay arbitration under an uninsured/underinsured motorist endorsement must be made within 20 days after service of the arbitration demand. (*See Matter of Steck (State Farm Ins. Co.*, 89 N.Y. 2d 1082 [1996]; *Matter of State Farm Ins. Co. v. Wiliams*, 50 A.D. 3d 807 [2nd Dept. 2008]).

Here, it is undisputed that petitioner's request to stay arbitration is well beyond the 20 day statutory period[1], as per CPLR §7503 (c). The law is very clear that requests to stay arbitration beyond 20 days of service of the arbitration demand are barred. (*See Matter of Steck (State Farm Ins. Co.)*, 89 N.Y. 2d 1082 [1996]; *Matter of State Farm Ins. Co. v. Wiliams*, 50 A.D. 3d 807 [2nd Dept. 2008]).

Under the Doctrine of Laches, as a defense to missing a deadline, the movant must show both the non-movant's delay in asserting a right and prejudice to the moving party. (*See Schulz v. State*, 81 N.Y. 2d 336 [2nd Dept. 1993]; *Sorrentino v. Mierzwa*, 25 N.Y. 2d 59 [2nd Dept. 1969].)

Here, the petitioner contends the almost 4 year delay between the arbitration demand date, March 31, 2009, and the scheduled arbitration date March 11, 2013, constitutes a delay in respondent seeking to assert his rights. However, the arbitration had been scheduled for two dates

[1] The within petition was brought over 1,000 days after the Request for Uninsured motorist arbitration.

but was adjourned each time because petitioner allegedly failed to note the date. Ultimately, a prolonged delay occurred as petitioner and the American Arbitration Association failed to set a new date. However, "[t]he mere lapse of time without a showing of prejudice will not sustain a defense of laches." (*Skrodelis v. Norbergs*, 272 A.D. 2d 316 [2nd Dept. 2000]; *see Matter of Barabash*, 31 N.Y. 2d 76 [2008]). Further, "[p]rejudice may be established by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay." (*Skrodelis v. Norbergs*, 272 A.D. 2d 316 [2nd Dept. 2000]; *See Thurmond v. Thurmond*, 155 A.D. 2d 527 [2nd Dept. 1989].)

Petitioners also contend that they would be prejudiced because the accident is over ten years old, no hospital is required to hold records for those amount of years, the police report is unavailable, and Grodzki has not executed the default judgment in its favor obtained over three years ago. First, petitioners fail to prove that the hospital records are, in fact, unattainable. Second, the petitioner states the "police report is unavailable" but provides it as Exhibit "D." Third, as per CPLR § 3215 (c) default judgment proceedings must be made within a year after the default, but a money judgment will only be deemed satisfied after the expiration of twenty years from when first entitled to enforce it, as per CPLR § 211 (b). However, even if this were untrue, as petitioner believes, and CPLR § 3215 (c) rendered default judgments void after a year, the assertion made by petitioner that "AutoOne cannot pursue a claim against Timothy Braddock. Thus Respondent's actions have prejudiced AutoOne's subrogation rights and thus, the 'doctrine of laches' applies…" holds no bearing because no such party "AutoOne" exists within this action. (Petitioner's Affirmation ¶ 18.)

Lastly, petitioner's reliance on *Metlife v. Zampino* is misplaced. (65 A.D. 3d 1151 [2nd Dept. 2009]). In *Metlife*, the respondent failed to disclose the fact that she had settled with one of the defendants in the main action with the knowledge or consent of the SUM carrier. (*Id.*) Furthermore, in *Metlife*, the petitioner did not discover these facts until after the expiration of the 20 day period and then once they were made aware moved promptly. Here, there has been no settlement without the consent of the Petitioner. In addition, the petitioner did not move promptly, but instead waited more than 1,000 days before bringing the within petition.

Conclusion

For the reasons set forth above General Assurance Co.'s Order to Show Cause requesting a stay of arbitration is denied.

Dated: August , 2013

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Bernice D. Siegal, J.S.C.