

Silvers v City of New York

2014 NY Slip Op 30257(U)

January 27, 2014

Supreme Court, New York County

Docket Number: 106401/09

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHERYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice _____

PART _____

Index Number : 106401/2009
SILVERS, CLEO
vs
CITY OF NEW YORK
Sequence Number : 003
COMPEL DISCLOSURE

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

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

FILED

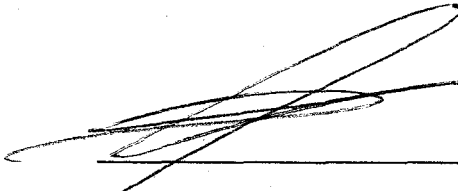
JAN 30 2014

COUNTY CLERK'S OFFICE
NEW YORK

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 1/27/14

 _____, J.S.C.

- 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 5

-----X
CLEO SILVERS,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF SANITATION, NELSON
MOLINA and MOHAMAD ELKADRI,

Defendants.

-----X
KATHRYN E. FREED, J.S.C.

DECISION/ORDER

Index No. 106401/09

Seq. No. 003

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	...1 (Exs. A-F)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....	...2 (Exs. A-C)
REPLYING AFFIDAVITS.....	...3.....
EXHIBITS.....
STIPULATIONS.....
OTHER.....

FILED

JAN 30 2014

COUNTY CLERK'S OFFICE
NEW YORK

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Plaintiff Cleo Silvers moves for an order compelling non-party Motor Vehicle Accident Indemnification Corporation ("MVAIC") to "appear on behalf of [d]efendant Mohamad Elkadri" in the captioned action. After a review of the papers presented, all relevant statutes and case law, the Court **denies** the motion.

Factual and Procedural Background

This case arises from an incident on January 5, 2009 in which plaintiff was allegedly injured

in a motor vehicle accident. At the time of the incident, plaintiff was a passenger in a vehicle, owned and operated by defendant Mohamad Elkadri, which was involved in a collision with a truck owned by the defendant New York City Department of Sanitation and operated by defendant Nelson Molina. A police report reflected that Elkadri was insured by GEICO on the date of the incident.

By correspondence dated February 25, 2009, GEICO advised plaintiff's attorney that Elkadri had coverage of \$50,000/\$100,000 on his automobile policy.

A letter submitted in support of plaintiff's motion as Exhibit "B" reflects that, on March 4, 2009, GEICO wrote to Elkadri to disclaim coverage on the ground that the car he was operating at the time of the incident was a "vehicle for hire" and thus not covered under his policy. By correspondence dated November 3, 2010, GEICO sent plaintiff's counsel a copy of the March 4, 2009 disclaimer letter. The March 4, 2009 letter was addressed to Elkadri and copied plaintiff's counsel at 295 Madison Avenue, New York New York 10017. The November 3, 2010 letter was addressed directly to plaintiff's counsel in the same fashion.

On December 21, 2010, plaintiff filed a sworn "Notice of Intention to Make Claim" ("Notice") with MVAIC. In the Notice, plaintiff represented, inter alia, that she had been injured in a motor vehicle accident while riding in an uninsured car. She further represented that more than 90 days had elapsed from the date of the accident and that the delay was caused by GEICO, which initially confirmed coverage for Elkadri but then disclaimed.

On December 30, 2010, MVAIC wrote to plaintiff's attorney to advise that it had received plaintiff's claim for benefits and was denying the claim because plaintiff failed to serve the Notice within 180 days after GEICO's denial of coverage.

By notice of motion returnable September 26, 2013, plaintiff moved to compel MVAIC to

appear on behalf of Elkadri and MVAIC opposed the motion.

Positions of the Parties

Plaintiff's attorney asserts that MVAIC must appear for Elkadri since plaintiff complied with Insurance Law § 5208(3)(B) by filing a timely Notice with MVAIC within 180 days after November 3, 2010, the date on which he received the disclaimer issued by GEICO, Elkadri's insurer. Counsel claims that the 180-day period to file the Notice did not begin to run on March 4, 2009 because his office never received the disclaimer GEICO claims to have sent on that date.

In opposition to the motion, MVAIC asserts that plaintiff's Notice was untimely. MVAIC claims that the Notice should have been filed by August 31, 2009, 180 days after the disclaimer letter of March 4, 2009. MVAIC claims that, because the Notice was untimely, it was prevented from investigating, and possibly challenging, the disclaimer.

Conclusions of Law

"Pursuant to Insurance Law § 5208(a)(3)(A), (B), a notice of intention to file a claim against MVAIC must be filed within 180 days of receipt of notice that the insurer of the person alleged to be liable for damages has disclaimed liability or denied coverage." *Matter of Vil v MVAIC*, 304 AD2d 588 (2d Dept 2003) (*citations omitted*). Despite the parties' contentions regarding the timeliness of plaintiff's Notice, this Court cannot resolve this issue because MVAIC is not a party in this matter. Since this Court lacks jurisdiction over MVAIC, plaintiff's motion must be denied. *See Axis Chiropractic, PLLC v United Automobile Ins. Co.*, 29 Misc3d 141(A) (App Term 2d Dept 2010). Further, plaintiff has failed to supply, and this Court has been unable to locate, any legal

authority permitting plaintiff to compel MVAIC to appear for Elkadri.

Even assuming, arguendo, that this Court had jurisdiction over MVAIC, plaintiff's motion would be denied since she failed to establish that GEICO, also a nonparty, properly disclaimed coverage for Elkadry. Plaintiff merely assumes that GEICO's disclaimer was correct without explaining whether it was challenged or, if not, why. Nor does plaintiff explain why GEICO was not named as a party in this matter.

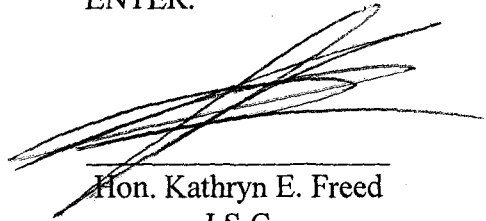
Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion is denied; and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: January 27, 2014

ENTER:



Hon. Kathryn E. Freed
J.S.C.

FILED

JAN 30 2014

COUNTY CLERK'S OFFICE
NEW YORK