

Matter of Metlife Auto & Home Ins. Co. v Delacruz-Brennan

2014 NY Slip Op 30340(U)

February 4, 2014

Sup Ct, NY County

Docket Number: 652706/13

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

**In the Matter of the Application of METLIFE AUTO &
HOME INSURANCE COMPANY,**

INDEX NO. 652706/13

MOTION DATE 1/17/14

Petitioner,

MOTION SEQ. NO. 001

-v-

JOCEYLN DELACRUZ-BRENNAN,

Respondent.

The following papers, numbered 1-5, 9-11, 15, 17, 21, 22, 26-27, were read on this petition to stay a UM arbitration

Notice of Petition— Petition; Exhibits A; B; C; D; Notice of Petition; Affidavit of Service; Affidavit _____

**█ No(s). 1; 2; 3; 4; 5
9; 10; 17**

Affirmation in Opposition—Affidavit of Service; Affirmation in Opposition —Affidavit of Service; Exhibit A _____

█ No(s). 11; 21; 22

Reply Affirmation — Affidavit of Service; Reply Affirmation; Affidavit of Service _____

█ No(s). 15; 26; 27

Upon the foregoing papers, it is **ORDERED** that the petition to stay arbitration is granted to the extent that a framed issue hearing is directed of the preliminary issues as to whether a vehicle bearing a New York license plate no. **FLA 7695** was involved in a motor vehicle collision on **September 14, 2011**, and whether this vehicle was insured on that date, and the arbitration is stayed pending such framed issue hearing; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) Whether a vehicle bearing a New York license plate no. **FLA 7695**, registered to Angel Gregorio Perez, made contact with the vehicle operated by respondent Jocelyne Delacruz-Brennan on **September 14, 2011**; and

(Continued . . .)

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

(2) If Perez's vehicle is found to be involved in the motor vehicle collision, whether there was insurance coverage for Perez's vehicle for that motor vehicle collision on September 14, 2011; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part, shall assign this matter to an available JHO/Special Referee to determine as specified as above, and it is further

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 30 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email an **I n f o r m a t i o n S h e e t** (a v a i l a b l e a t <http://www.courts.state.ny.us/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to an adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee, the trial of the issues specified above shall proceed day to day until completion; and it is further

ORDERED that petitioner is directed to serve by personal service a copy of this order with notice of entry, together with copies of all papers
(Continued . . .)

previously served in the proceeding, and a supplemental notice of petition and a supplemental petition upon State Farm Mutual Automobile Insurance Company and Angel Gregorio Perez, which upon such service shall be added as party respondents, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents as follows:

**In the Matter of the Application of
METLIFE AUTO & HOME INSURANCE
COMPANY,**

Petitioner,

- v -

**JOCELYN DELACRUZ-BRENNAN, ANGEL
GREGORIO PEREZ and STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY,**

Respondents.

and it is further

ORDERED that petitioner shall serve a copy of this order on the General Clerk's Office (60 Centre Street, Room 119) and the County Clerk (60 Centre St, Room 141B), who are directed to mark their records to reflect this amendment; and it is further

Petitioner seeks to stay an uninsured motorist arbitration brought by its insured, respondent Jocelyn Delacruz-Brennan. According to accident reports annexed to the petition, it appears that, on September 14, 2011, a vehicle struck Delacruz-Brennan's vehicle on Amsterdam Avenue, near the intersection of 157th Street, and left the scene. (Verified Petition, Ex A.) On one accident report, the only information about the offending vehicle is a New York license plate number, FLA 7695. (*Id.*) On another accident report, the driver and owner of offending vehicle is named as Perez, Angel, Gregorio. (*Id.*)

(Continued . . .)

In a letter dated January 19, 2012, proposed additional respondent State Farm Mutual Automobile Insurance Company (State Farm) wrote, "Our insured [Angel Gregorio Perez] denies involvement in this accident. He was out of the country when loss occurred and no one else had use of the vehicle." (Verified Petition, Ex D.) According to Delacruz-Brennan's attorney, Perez's denial prompted the demand for the uninsured motorist arbitration, on the theory that Perez's vehicle was operated without Perez's consent.

In opposition to this petition, State Farm submitted a written statement from Perez, which states, in pertinent part:

"My car was not on 157th and Amsterdam that day. I was in the Dominican Republic from August 2011 until [D]ecember 18 of 2013. . . . I told my friend he could use my car while I was in the Dominican Republic. Ei[illegible]ten Roche was the friend I gave permission to drive. I parked the car in a parking garage on 184th and Broadway in Manhattan. The car was a Mercury Sable, Gold colored. When I returned to New York the car was not running so I junked it in February 2013. The police report is incorrect, how can they have my name if they didn't have my license. My license was with me in the Dominican Republic. I was not in this accident must be a mistake." (Halpern Opp. Affirm., Ex A.)

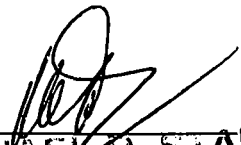
The submissions raise disputed issues of fact as to whether Perez's vehicle, bearing a New York license plate no. FLA 7695, made contact with Delacruz-Brennan's vehicle on September 14, 2011. If contact is proven, the submissions also raise the issue of whether the vehicle was insured on that date, which includes the issue of whether the Perez's vehicle was operated with Perez's permission. Perez denies operating the vehicle, but states that he gave a friend permission to use Perez's vehicle. There is no affidavit from Perez's friend.

In light of these factual issues, the Court directs a framed issued hearing of these issues. (*See e.g. Hertz Corp. v Holmes*, 106 AD3d 1001, 1003 [2d Dept 2013] [court should have conducted framed-issue hearing

(Continued . . .)

as to whether a vehicle was involved in the subject accident]; *Matter of Liberty Mut. Ins. Co. v Mohabir*, 68 AD3d 435 [1st Dept 2009].) The Court also grants petitioner's application to add Perez and State Farm as respondents to this petition. The Court reminds petitioner that personal jurisdiction must be obtained over the additional respondents prior to framed issue hearing. (See *Matter of American Transit Ins. Co. v Carillo*, 307 AD2d 220 [1st Dept 2003].)

Dated: 2/4/14
New York, New York


HON. MICHAEL D. STALLONE, J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... PETITION IS:
- 3. Check if appropriate:.....

<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER		
<input type="checkbox"/> DO NOT POST	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE	