

Reeves v American Tr. Ins. Co.
2021 NY Slip Op 32225(U)
November 9, 2021
Supreme Court, New York County
Docket Number: Index No. 100091/2021
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD **PART** **35**

Justice

-----X

MICHAEL REEVES,

Plaintiff,

- v -

AMERICAN TRANSIT INSURANCE COMPANY, ANDREW
LI, CHERYL GRAVES,

Defendant.

-----X

INDEX NO. 100091/2021

MOTION DATE 09/23/2021,
10/26/2021

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 42, 43, 44, 45, 46, 47

were read on this motion to/for ORDER OF PROTECTION.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISCOVERY - PRE-ACTION.

In this special proceeding, Plaintiff Michael Reeves seeks an award of no-fault/lost wages benefits from American Transit Insurance Company (“ATC”), a no-fault insurance company, for lost wages stemming from an accident Plaintiff suffered on May 23, 2020.

On February 18, 2021, Plaintiff commenced this proceeding by Order to Show Cause (the first OSC) seeking preliminary injunctive relief in the form of a temporary restraining order (TRO) directing ATC to make the no-fault payments, as well as “punitive and compensatory damages for the unfair denial of benefits” (Mot. Seq. 001). Plaintiff’s first OSC named Andrew Li and Cheryl Graves, employees of ATC, as additional defendants. All three Defendants cross-moved for denial of the first OSC and dismissal of the action. Plaintiff subsequently moved for an order to “expedite” this matter (Motion Seq. 002)

On June 2, 2021, this Court issued its Decision and Order denying both Motion Seqs. 001 and 002 (NYSCEF doc No. 20). The Court found that Plaintiff's first OSC was not properly served on Defendants, as the papers were mailed and not personally served as directed. The Court further noted that Plaintiff's TRO request also failed on the merits, as Plaintiff was unable to demonstrate a probability of success on the merits given the outstanding questions of fact regarding whether he was employed on the date of his accident. With respect to Defendants' cross-motion to dismiss the proceeding under Motion Seq. 001, the Court found that Plaintiff had not established a basis to assert direct claims against Mr. Li and Ms. Graves, and thus dismissed them both from this action. The Court also dismissed all causes of action against ATC except for Plaintiff's breach of contract claim for lost wages.

On June 24, 2021, Plaintiff again moved by OSC, seeking an order directing ATC to pay his no-fault benefits (Motion Seq. 003). Although not a motion for reargument or renewal, Motion Seq. 003 essentially challenged the Court's order denying Motion Seqs. 001 and 002 by arguing that the Court improperly relied on a "defective" unsigned Examination Under Oath (EUO) transcript of Plaintiff's deposition testimony conducted by an ATC claims investigator in January 2021. Plaintiff argued that as the Court did not dismiss his breach of contract claim for no fault benefits, Motion Seq. 003 was proper, and he attached various pieces of evidence supporting his claim that he was employed the date of his accident, including email correspondence and copies of his 2019 tax returns.

By Decision and Order dated September 9, 2021, the Court issued a decision resolving Motion Seq. 003 (NYSCEF doc No. 40), in which it held that while the motion was essentially an

improper application for reargument that could not be entertained, Plaintiff was entitled to present his evidence in a hearing before a Special Referee for determination on his remaining cause of action for lost wage benefits (“the Order of Reference”). The Order of Reference directed that “the matter of Plaintiff’s entitlement to no fault benefits under § 5102(a)(2) and all issues raised in action, including, inter alia, whether Plaintiff was employed on the date of his accident and whether the injuries Plaintiff suffered due to his accident rendered him unable to work, are hereby referred to a Special Referee to Hear and Determine.” The Order of Reference marked this action disposed as all remaining issues in the action were referred to a Special Referee to Hear and Determine.

On September 14, 2021, Plaintiff filed Motion Seq. 004, seeking a protective order as to certain requests for admissions in ATC’s Notice to Admit (NYSCEF doc No. 42). ATC then filed opposition, arguing that the motion failed to state any basis for a protective order under New York Law (NYSCEF doc No. 46).

On October 12, 2021, Plaintiff filed Motion Seq. 005, seeking a “continuance” of this action in the interest of justice. ATC opposed on the grounds that Plaintiff stated no basis for a continuance, given that the Special Referee hearing had not yet been scheduled and the parties had previously been directed by the Court via email that pre-trial discovery could proceed pending the hearing (NYSCEF doc No. 55).

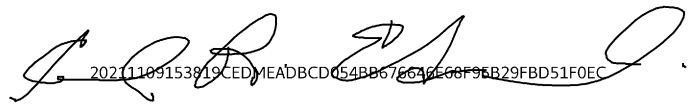
Given that the Order of Reference referred the entirety of the issues raised in this action to a Special Refer to Hear and Determine, Motion Seqs. 004 and 005 are not properly before this

Court. Additionally, the direction given to the parties to proceed with discovery was contrary to the Court’s Order of Reference. All applications, including applications related to discovery, should instead be presented to the Special Referee once this matter is calendared for a hearing.

Therefore, it is hereby

ORDERED that Motion Seq. 004 and 005 are denied without prejudice; and it is further

ORDERED that all further motions and applications related to this matter shall be presented before the Special Referee pursuant to the Court’s Order of Reference dated September 9, 2021.



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11/9/2021
DATE

CAROL EDMEAD, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE
		<input checked="" type="checkbox"/>	OTHER
		<input type="checkbox"/>	DENIED

APPLICATION:

CHECK IF APPROPRIATE: