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Travelers Indem. Co. v YAGUDAEV
2006 NY Slip Op 50630(U)
Decided on March 30, 2006
Supreme Court, Queens County
Rios, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 30, 2006

Supreme Court, Queens County

Travelers Indemnity Company, Petitioner,

against

ARKADY YAGUDAEV and YURI NORMATOV, Respondents.

28458/04 Jaime A. Rios, J.

Issue

In this CPLR 7503[b] proceeding the petitioner Travelers Indemnity Company seeks to permanently stay an arbitration for uninsured motorist (UM) benefits demanded by respondents Arkady Yagudaev and Yuri Normatov on the ground that respondents' demand for arbitration is barred by the statute of limitations.

The parties agreed that the sole issue to be determined by the court is whether the respondents' demand for arbitration is barred by the statute of limitations.

Background

On July 7, 1998, a vehicle owned and operated by respondent Arkady Yagudaev (Yagudaev) and insured by Travelers Indemnity Company (Travelers) was involved in an alleged automobile accident with an uninsured vehicle. Respondent Yuri Normatov (Normatov) was a passenger in the Yagudaev vehicle on the date of the accident.

The police accident report for the July 7, 1998 accident indicates that the offending vehicle fled the scene of the accident and was a truck registered in New York with License Plate Number 38888AJ.

Thereafter, respondents discovered that George Alevas (Alevas) was the owner of a vehicle with License Plate Number 38888AJ and that this vehicle was insured by Allstate Insurance Company.

By letter dated September 2, 1998 respondents made a claim against Travelers for UM benefits pursuant to Yagudaev's insurance policy with Travelers.

By summons and complaint dated October 11, 2000, respondents commenced a law suit against Alevas and John Doe, being a fictitious name and intended to be the operator of the Alevas vehicle.

On December 19, 2000, Alevas served an answer and counterclaim.

During pre-trial discovery respondents' counsel on August 22, 2002 conducted an Examination Before Trial of George Alevas. Travelers and the respondents herein stipulate that Alevas established at the EBT that neither he nor his vehicle was involved in the alleged accident on July 7, 1998.

On November 29, 2004 respondents discontinued their law suit against Alevas.

On December 12, 2004 Travelers received respondents' demand for arbitration.

By petition dated December 21, 2004 Travelers commenced this proceeding to permanently stay the arbitration sought by respondents.

Contentions

Travelers contends that respondents' demand for UM arbitration is barred by the six year statute of limitations period because Travelers received the respondents' demand more than six years after the date of the accident.

In opposition, respondents contend that their demand for UM arbitration is not barred by the six year statute of limitations period because it was not discovered that the offending vehicle was uninsured until August 22, 2002, the date of Alevas' EBT, and therefore, the statute of limitations began to run on August 22, 2002.

Decision

A demand for arbitration of an uninsured motorist's claim is subject to the six-year statute of limitations, which runs from the date of the accident or from the time when subsequent events render the offending vehicle uninsured (*see Jenkins v State Farm Ins. Co.*, 21 AD3d 529 [2005]; *Allstate Ins. Co. v Torrales*, 186 AD2d 647 [1992]).

The party seeking the demand has the burden of showing that a later accrual date than the date of the accident is applicable (*see Jenkins v State Farm Ins. Co.*, 21 AD3d 529 [2005]; *Allstate Ins. Co. v Torrales*, 186 AD2d 647 [1992]). [*2]

Here, the respondents were not aware that the offending vehicle was uninsured until August 22, 2002, when respondents' counsel conducted an EBT of Alevas, the alleged owner of the offending vehicle. During the EBT of Alevas, respondents discovered that the Alevas vehicle was not of the same color and description as the offending vehicle previously identified by respondents. The court finds that respondents have sufficiently demonstrated that an accrual date later than the date of the accident is applicable, as the claim with respect to the unidentified hit and run vehicle only was realized upon discovery of the misidentification of the Alevas

vehicle. As a result, the demand for arbitration is timely as it was received by Travelers on December 12, 2004, approximately two and a half years after the allegedly offending vehicle became uninsured.

Accordingly, Travelers' application for a permanent stay of arbitration is hereby denied.

Settle judgment. Dated: March 30, 2006

J.S.C.