SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

Matter of Arbitration Between Allstate Insurance Company and Michael J. Cappadonia

Matter of Arbitration Between Allstate Insurance Co. and Cappadonia · No. CA 15-02099 · Decided October 7, 2016

SUMMARY

The Appellate Division, Fourth Department reversed an order permanently staying arbitration in a dispute over supplementary uninsured/underinsured motorist coverage. The court held that the insurer's petition was untimely under CPLR 7503(c) because it was filed more than 20 days after the arbitration demand. The court also held that the exception for disputes where the parties never agreed to arbitrate did not apply because the insurance policy contained an arbitration provision.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Centra, J.P.; Peradotto, J.; Lindley, J.; Curran, J.; Troutman, J.
JURISDICTION	New York
DECIDED	October 7, 2016
DOCKET	CA 15-02099
DISPOSITION	reversed
PROCEDURAL POSTURE	Respondent appealed from an order granting the insurer's petition under CPLR 7503(c) to permanently stay arbitration of a supplementary uninsured/underinsured motorist coverage claim.
STANDARD OF REVIEW	The Appellate Division reviewed the legal timeliness issue and reversed the order on the law.
PRECEDENTIAL VALUE	Published Appellate Division memorandum and order; precedential under New York law to the extent permitted by the court's published decision.
PARTIES	Michael J. Cappadonia v. Allstate Insurance Company

TOPICS

arbitration uninsured motorist appellate procedure civil procedure

PRACTICE AREAS

insurance law arbitration civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Allstate's petition to permanently stay arbitration was time-barred because it was not filed within 20 days of Cappadonia's formal arbitration demand.
2. Whether the exception to CPLR 7503(c)'s 20-day deadline applies when the insurer contends that no SUM coverage exists, where the insurance policy contains an arbitration provision.

HOLDINGS

1. A petition to stay arbitration under CPLR 7503(c) must be filed within 20 days of the formal arbitration demand, and Allstate's petition filed more than five months after the demand was untimely.
2. The Matarasso exception to the 20-day deadline did not apply because the policy contained an arbitration provision, even though Allstate argued that no SUM coverage existed for the accident.

FACTUAL BACKGROUND

Cappadonia held an automobile liability policy from Allstate covering a pickup truck and two passenger vehicles, with supplementary uninsured/underinsured motorist coverage and an arbitration clause. While the policy was in effect, he was injured when a motorcycle he was operating was struck by an allegedly underinsured vehicle. Although the motorcycle was not covered by the policy, Cappadonia sought SUM benefits; Allstate disclaimed coverage and Cappadonia demanded arbitration. Allstate waited more than five months after the formal arbitration demand before petitioning to stay arbitration.

PROCEDURAL HISTORY

Cappadonia demanded arbitration after Allstate disclaimed SUM coverage for injuries sustained while he was riding an allegedly underinsured motorcycle that was not covered under his policy. More than five months after the arbitration demand, Allstate commenced a proceeding to stay arbitration. Supreme Court, Oneida County, granted the petition without explanation. The Appellate Division unanimously reversed and dismissed the petition as untimely.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The petition to permanently stay arbitration was dismissed; no further remand instructions were stated.

CASES CITED

- Aetna Life & Cas. Co. v. Stekardis, 34 NY2d 182, 185-186
- John W. Cowper Co. v. Clintstone Props., 120 AD2d 976, 977, lv denied 68 NY2d 610
- Matter of Matarasso [Continental Cas. Co.], 56 NY2d 264, 268
- Matter of Fiveco, Inc. v. Haber, 11 NY3d 140, 145, rearg. denied 11 NY3d 801
- Matter of Steck [State Farm Ins. Co.], 89 NY2d 1082, 1084
- Matter of Nova Cas. Co. v. Martin, 57 AD3d 548, 549
- Matter of State Farm Mut. Auto. Ins. Co. v. Urban, 78 AD3d 1064, 1065-1066
- State Farm Ins. Cos. v. DeSarbo, 52 AD3d 936, 937

OPINION

PER CURIAM.

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department 790 CA 15-02099 PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND TROUTMAN, JJ. IN THE MATTER OF ARBITRATION BETWEEN ALLSTATE INSURANCE COMPANY, PETITIONER-RESPONDENT, AND MEMORANDUM AND ORDER MICHAEL J. CAPPADONIA, RESPONDENT-APPELLANT. FINKELSTEIN & PARTNERS, LLP, NEWBURGH (GEORGE A. KOHL, II, OF COUNSEL), FOR RESPONDENT-APPELLANT.

LAW OFFICE OF JOHN TROP, DEWITT (BARNEY F. BILELLO OF COUNSEL), FOR PETITIONER-RESPONDENT. Appeal from an order of the Supreme Court, Oneida County (Erin P. Gall, J.), entered June 23, 2015. The order granted the petition to permanently stay arbitration. It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: In this dispute over supplementary uninsured/underinsured motorist (SUM) coverage, respondent insured appeals from an order granting the petition of petitioner insurer to stay arbitration permanently pursuant to CPLR 7503 (c).

We agree with respondent that Supreme Court erred in granting the petition. Respondent obtained an automobile liability insurance policy from petitioner for a pickup truck and two passenger vehicles. The policy provided SUM coverage to respondent, and also included an arbitration clause. While the policy was in effect, respondent sustained personal injuries when a motorcycle he was operating was struck by an allegedly underinsured vehicle.

Although the motorcycle was not covered under the policy issued to him by petitioner, respondent made a claim with petitioner for SUM coverage. Petitioner disclaimed coverage on the ground that the motorcycle was not covered under the policy, prompting respondent to demand arbitration pursuant to CPLR 7503 (c). More than five months after respondent’s demand, petitioner commenced this proceeding to stay arbitration, asserting, as it did in the disclaimer letter, that no

SUM coverage existed in connection with the accident because the motorcycle on which petitioner was riding was not a covered vehicle under the policy.

In opposition, respondent argued, inter alia, that the petition was untimely. The court granted the petition without explanation, and we now reverse. -2- 790 CA 15-02099 We agree with respondent that the petition to stay arbitration is time-barred because it was not filed within 20 days of respondent's formal arbitration demand (see CPLR 7503 [c]; Aetna Life & Cas.

Co. v Stekardis, 34 NY2d 182, 185-186; John W. Cowper Co. v Clintstone Props., 120 AD2d 976, 977, lv denied 68 NY2d 610). Although the 20- day time limit of CPLR 7503 (c) does not apply if the parties never had "any agreement to arbitrate" (Matter of Matarasso [Continental Cas. Co.], 56 NY2d 264, 268), the "Matarasso exception is inapplicable" because "the contract[] at issue in this case contain[s] an arbitration provision" (Matter of Fiveco, Inc. v Haber, 11 NY3d 140, 145, rearg denied 11 NY3d 801; see Matter of Steck [State Farm Ins.

Co.], 89 NY2d 1082, 1084). Indeed, so long as the subject insurance policy contains some type of arbitration agreement between the parties, as it does here, an untimely stay application which "conten[ds] that there is no coverage under [the] policy's [SUM] provisions... is outside the [Matarasso] exception" (Matter of Nova Cas. Co. v Martin, 57 AD3d 548, 549; see Steck, 89 NY2d at 1084; Matter of State Farm Mut.

Auto. Ins. Co. v Urban, 78 AD3d 1064, 1065-1066; State Farm Ins. Cos. v DeSarbo, 52 AD3d 936, 937). Because the petition was untimely, the court had no power to entertain it (see Fiveco, Inc., 11 NY3d at 145; Steck, 89 NY2d at 1084; Aetna Life & Cas. Co., 34 NY2d at 185-186).

In light of our determination, we need not address respondent's remaining contentions. Entered: October 7, 2016 Frances E. Cafarell Clerk of the Court