

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

Matter of Merchants Preferred Ins. Co. v. Waldo

125 A.D.3d 864 (2d Dep't 2015) · No. 2013-05743 · Decided February 18, 2015

SUMMARY

The Appellate Division, Second Department, reversed an order permanently staying arbitration of an uninsured motorist claim. It directed a framed-issue hearing to determine whether the claimant's vehicle had physical contact with an alleged hit-and-run vehicle and required a new determination on the remaining petition branches.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Peter B. Skelos, J.; Sheri S. Roman, J.; Robert J. Miller, J.
JURISDICTION	New York
DECIDED	February 18, 2015
DOCKET	2013-05743
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Allison Waldo appealed from an order granting the insurer's petition to permanently stay arbitration of her uninsured-motorist claim and effectively denying as academic the request for a temporary stay pending a framed-issue hearing.
STANDARD OF REVIEW	Review was on the law; the appellate court independently evaluated whether the insurer established sufficient evidentiary facts to justify a stay and whether a framed-issue hearing was required.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; binding precedent subject to subsequent appellate authority.
PARTIES	Allison Waldo v. Merchants Preferred Ins. Co.

TOPICS

uninsured motorist

arbitration

insurance coverage

evidence

appellate procedure

PRACTICE AREAS

insurance law

arbitration

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evidence

QUESTIONS PRESENTED

1. Whether the insurer established sufficient evidentiary facts to justify a stay of arbitration based on Waldo's alleged failure to satisfy the policy's reporting and sworn-statement requirements.
2. Whether the insurer established a preliminary issue concerning physical contact between Waldo's vehicle and the alleged hit-and-run vehicle.
3. Whether Waldo's affidavit raised a triable issue of fact requiring a framed-issue hearing before the court could determine whether arbitration should be permanently stayed.

HOLDINGS

1. The insurer failed to establish sufficient evidentiary facts concerning Waldo's alleged failure to report the accident or provide a sworn statement because it relied only on unsupported assertions by its attorney.
2. Because the insurer established a preliminary issue concerning physical contact and Waldo's affidavit raised a triable issue of fact on that issue, the court was required to conduct a framed-issue hearing before making a new determination on the petition.

KEY QUOTATIONS

“The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay” ([*1])

“Since the appellant's affidavit raised a question of fact on the issue of physical contact, the Supreme Court should have conducted a framed-issue hearing to determine whether a hit-and-run vehicle was involved in the accident” ([*2])

FACTUAL BACKGROUND

Allison Waldo sought uninsured-motorist benefits for injuries allegedly sustained when another vehicle struck or skimmed her vehicle while changing lanes and then was treated as a hit-and-run vehicle. The insurer disclaimed coverage and alleged that Waldo failed to comply with policy requirements to report the accident promptly and submit a sworn statement supporting her claim. The insurer also alleged that there had been no physical contact with the hit-and-run vehicle. Waldo submitted an affidavit stating that the other vehicle struck her vehicle and skimmed her front bumper, creating a factual dispute regarding physical contact.

PROCEDURAL HISTORY

Waldo sought uninsured-motorist benefits after an accident involving an unknown hit-and-run driver and demanded arbitration after the insurer disclaimed coverage. The insurer commenced a CPLR article 75 proceeding seeking a temporary or permanent stay of arbitration. Supreme Court, Nassau County, granted the permanent stay. The Appellate Division reversed, granted a temporary stay pending a framed-issue hearing, and remitted for that hearing and a new determination on the remaining branches of the petition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court, Nassau County, must conduct a framed-issue hearing to determine whether there was physical contact between Waldo's vehicle and the alleged hit-and-run vehicle, and then make a new determination on the remaining branches of the insurer's petition.

CASES CITED

- Matter of Hertz Corp. v. Holmes, 106 A.D.3d 1001, 1002-1003
- Matter of AutoOne Ins. Co. v. Umanzor, 74 A.D.3d 1335, 1336
- Matter of Farmers Ins./Truck Ins. Exch. v. Terzulli, 112 A.D.3d 628
- Matter of Metropolitan Prop. & Cas. Ins. Co. v. Singh, 98 A.D.3d 580, 581
- Bates v. Yasin, 13 A.D.3d 474
- Matter of Allstate Ins. Co. v. Aizin, 102 A.D.3d 679, 681
- Matter of Utica Mut. Ins. Co. v. Leconte, 3 A.D.3d 534, 535
- Matter of New York Cent. Mut. Fire Ins. Co. v. Paredes, 289 A.D.2d 495