

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 20

X

In the Matter of the Application for a Stay of
all Arbitration Proceedings attempted to be had
between HANOVER INSURANCE GROUP,

Petitioner,

Index No.: 002113/10
Motion Sequence...01
Motion Date...07/01/10

-against-

SARA ARTIS,

Respondent,

-and-

MILLENIUM HYUNDAI,
HEMPSTEAD, NEW YORK,

Proposed Additional Respondent.

X

Papers Submitted:

Notice of Petition.....X

Affirmation in Opposition.....X

Upon the foregoing papers, the Petitioner's application for an order permanently staying the uninsured motorist arbitration or in the alternative granting a temporary stay of arbitration pending a hearing on the issue of whether the Proposed Additional Respondent, MILLENIUM HYUNDAI of HEMPSTEAD (hereinafter

“MILLENIUM”), was in fact the registered owner of the offending vehicle witnessed leaving the scene of the hit and run accident, is decided as hereinafter provided.

The Petitioner, HANOVER INSURANCE GROUP (hereinafter “HANOVER”) alleges that on September 6, 2007¹, the Respondent, SARA ARTIS (hereinafter “ARTIS”), was hit by a motor vehicle which fled the scene. The police report indicates that the New York license plate number of the car that allegedly fled the scene was “EAE8019” and that said vehicle was registered to the Proposed Additional Respondent, MILLENIUM.

The Proposed Additional Respondent, MILLENIUM, states in opposition that it was not the registered owner of the alleged offending vehicle that fled the scene of the accident. The Proposed Additional Respondent notes that the police report unequivocally states that, “NY Reg EAE 8019 does not match vehicle Reg to Millenium Hyundai, Hempstead”. *See* Police Report dated September 9, 2006, attached to the Notice of Petition as Exhibit “A”. The Affirmation in Opposition submitted by the Proposed Additional Respondent further states that MILLENIUM is an authorized Department of Motor Vehicle Agent and obtains New York license plates in accordance with DMV’s Dealer Plate Issuance Program. MILLENIUM submits in support of its opposition the affidavits of Beth Sheridan, the Controller for Millenium, and Angela Coppola, the Motor Vehicle Manager.

¹ The Court notes that the Petitioner’s Notice of Petition and Petition states the incorrect accident date of April 6, 2007. The Respondent’s Affirmation in Opposition, however, correctly points out that according to the police report and other documentation, the accident in fact occurred on September 6, 2007.

The affidavits of Ms. Sheridan and Ms. Coppola state, in pertinent part, that the license plate bearing number "EAE8019" was delivered to MILLENIUM on or about May 15, 2007. Ms. Sheridan states that MILLENIUM secured New York State license plate number "EAE8019" under lock and key from the time they first obtained possession of said plate from the DMV (on or about May 15, 2007) up to and including December 1, 2007, at which time the plates were affixed to a vehicle that was sold to John Ruziak, Jr. MILLENIUM submits additional documentation tending to establish the sale of the vehicle bearing license plate number "EAE8019" and the Registration Vehicle Application by Mr. Ruziak. The Court notes that the Vehicle Registration Application states that the application is for license plate number "EAE8004" and not the license plate number at issue, "EAE8019".

Based upon the foregoing, it appears that an issue of fact exists with respect to whether MILLENIUM is the registered owner of the offending vehicle that fled the scene of the accident on September 6, 2007. As such, the Petitioner's request for a temporary stay of arbitration pending a hearing to determine the issues of whether the Proposed Additional Respondent was the registered owner of the vehicle described in the police report and whether the Respondent has the right to proceed to arbitration, is **GRANTED**.

Should the arbitration proceed after a determination of the framed issue, the Petitioner is entitled to discovery pursuant to the terms and conditions of the insurance policy.

Accordingly, it is hereby

ORDERED, that the arbitration is stayed pending resolution of the issues raised herein; and it is further

ORDERED, that subject to the discretion of the Justice there presiding this matter shall appear on the calender of CALENDAR CONTROL PART on **DECEMBER 1, 2010 at 9:30 a.m.** The directive with respect to the hearing is subject to the right of the Justice presiding in CCP to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney/Referee, as he or she deems appropriate; and it is further

ORDERED, that the Proposed Additional Respondent, MILLENIUM is hereby added as a necessary party (see CPLR §1001) provided the Petitioner obtains jurisdiction over such party pursuant to CPLR Article 3 by service of a copy of this order and all papers upon which it is based within twenty (20) days after the entry of this order. A failure to add such parties may result in a dismissal for the failure to add a necessary party (see CPLR §1003); and it is further

ORDERED, that there shall be a response to the Petition by the added Respondent. Such response shall be served no later than twenty (20) days after jurisdiction has been obtained. The response by the purported insurer shall include copies of all documentation and affidavits relied upon in support of the claim of non-coverage; and it is further

ORDERED, that the Petitioner shall serve and file a Note of Issue no later than

sixty (60) days after entry of this order in default of which the action shall be deemed abandoned (see CPLR § 3216). The Note of Issue shall be accompanied by a copy of this order and proof that jurisdiction has been obtained over all necessary parties and a statement that a copy of such order has been mailed to all parties to the original Petition within twenty (20) days after entry of this order.

This constitutes the decision and order of the Court.

DATED: Mineola, New York
August 30, 2010



Hon. Randy Sue Marber, J.S.C.

ENTERED

SEP 02 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE