

Matter of Abreu v Motor Veh. Acc. Indem. Corp.

2024 NY Slip Op 32241(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 153896/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 153896/2023

IN THE MATTER OF THE APPLICATION OF CHARLEY ABREU

MOTION DATE 11/27/2023

Plaintiff,

MOTION SEQ. NO. 002

- v -

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, and after oral argument which occurred on March 12, 2024 with Harper A. Smith, Esq. appearing for Petitioner Charley Abreu ("Petitioner") and Paul Catsandonis, Esq. appearing for Respondent Motor Vehicle Accident Indemnification Corporation ("Respondent" or "MVAIC"), Respondent's motion for leave to reargue the Decision and Order of this Court dated October 27, 2023 (NYSCEF Doc. 24) is granted. Upon reargument, Petitioner's petition seeking leave to sue Respondent is denied.

I. Background

The instant action arises out of a motor vehicle accident (the "Accident") that occurred on January 11, 2022 (NYSCEF Doc. 8 at p.1). Petitioner was a pedestrian crossing the roadway in front of 808 East 139th Street, in Bronx County, New York, when he was struck by a motor vehicle that subsequently fled the scene (NYSCEF Doc. 8 at p. 1). The identity of the owner and operator of the unidentified vehicle that fled the scene was never obtained (NYSCEF Doc. 1 at p. 1).

On January 18, 2022, a Notice of Intention to Make a Claim to MVAIC was filed on behalf of Petitioner, within ninety (90) days from the date of the Accident, along with an affidavit of Petitioner stating that neither Petitioner nor anyone residing in the same household as Petitioner owned a vehicle at the time of the Accident (NYSCEF Doc. 1 at p.2). Subsequently, on April 26, 2023 Petitioner filed a petition (“Motion Sequence 001”) seeking permission to bring an action against Respondent pursuant to §5218 of the New York State Insurance Law (NYSCEF Doc. 2). By Decision and Order dated October 27, 2023 this Court granted Petitioner’s petition for leave to sue Respondent (NYSCEF Doc. 24).

On November 27, 2023 Respondent brought the instant motion for leave to reargue the Court’s Decision and Order on Motion Sequence 001, and upon reargument, for an Order vacating this Court’s Decision and Order on Motion Sequence 001 and denying Petitioner petition for leave to sue Respondent (NYSCEF Doc. 19). In support of its motion, Respondent argues that the Court overlooked its argument that Plaintiff is not a “qualified person” entitled to MVAIC benefits because Plaintiff was the occupant of the vehicle that he was loading and unloading and because Plaintiff failed to submit proof of New York State residency (NYSCEF Doc. 20 at ¶ 4, ¶ 17).

II. Discussion

a. Leave to Reargue is Granted

Pursuant to CPLR § 2221(d)(2), leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion. Whether to grant leave to renew or reargue is in the discretion of the Court (*Bank of America, N.A. v Filho*, 203 AD3d 594 [1st Dept 2022]; *Fulton Market Retail Fish Inc. v Todtman, Nachamie, Spizz & Johns, P.C.*, 158 AD3d 502 [1st Dept 2018]). The Court finds that there are grounds to grant leave to reargue, as set forth below.

In the case at bar, leave to reargue is appropriate because the Court overlooked Defendant's arguments that Plaintiff is not a "qualified person" entitled to MVAIC benefits because Plaintiff was the occupant of the vehicle that he was loading and unloading, and because Plaintiff failed to submit any proof of New York State residency.

b. Upon Reargument, Plaintiff's Motion for Leave to Sue Defendant is Denied

Pursuant to New York Insurance Law §5218 "any qualified person having a cause of action for death or personal injury arising out of the ownership, maintenance or use of a motor vehicle in this state, when the identity of the motor vehicle and of the operator and owner cannot be ascertained...may , upon notice to the corporation, apply to a court for an order permitting an action therefor against the corporation in that court" (NY CLS §5218[a]).

Proof that a claimant is a resident of the State of New York "is a condition precedent to the claimant being a 'qualified person'" eligible for MVAIC benefits (*SK Prime Med. Supply, Inc. v MVAIC*, 2015 NY Misc. LEXIS 4202 [2d Dept 2015]). Further, the First Department has held that a petitioner fails to establish themselves as a qualified person where they fail to provide proof of New York residency (*Matter of Willingham v Huston*, 36 AD3d 469 [1st Dept 2007]). Moreover, where a petitioner fails to "submit any of the suggested proof of primary residency, such as bank statements, vote registration statements, or bills addressed to [them]" they have not conclusively established residency during the relevant time period (*Matter of Jacobowitz v New York City Dept. of Hous. Preserv. & Dev.*, 160 AD3d 417, 417-418 [1st Dept 2018]). Further, "self-generated documents" do not establish conclusively residency (*Id.*).

Here, the only documents offered by Petitioner as purported proof of New York residency are the MV-104 and the MVAIC No-Fault paperwork which both state that Petitioner is a resident of New York (NYSCEF Doc. 29). However, each of the documents submitted by Petitioner are

self-generated and thus insufficient to establish conclusively residency. As Petitioner has failed to conclusively establish New York residency, Petitioner has failed to demonstrate that he is a “qualified person” eligible for MVAIC benefits. As such, Petitioner’s petition is denied. Having denied Petitioner’s petition for failure to prove New York State residency, the Court need not consider Respondent’s alternative grounds for denial.

Accordingly, it is hereby,

ORDERED that Respondent Motor Vehicle Accident Indemnification Corporation’s motion for leave to reargue this Court’s October 27, 2023 Decision and Order (NYSCEF Doc. 24) is granted; and it is further

ORDERED that upon reargument, the Decision and Order of this Court dated October 27, 2023 is vacated and Petitioner Charley Abreu’s petition for leave to sue respondent Motor Vehicle Accident Indemnification Corporation is denied; and it is further

ORDERED that within ten days of entry, Respondent Motor Vehicle Accident Indemnification Corporation shall serve a copy of this Decision and Order, with notice of entry, on all parties to this action; and it is further

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ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/1/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE