

**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA**,
Justice

In the Matter of the Application of **NATIONWIDE
AFFINITY INSURANCE COMPANY OF AMERICA**,

Petitioner,

-against -

ERICK RAMOS,

Respondent,

and

UNITED SERVICES AUTOMOBILE ASSOCIATION,

Proposed Additional Respondent.

CASE DISPOSED: YES
MOTION R/D: 1/19/17
SUBMISSION DATE: 5/11/18
MOTION SEQUENCE NO.: 001 MG

ATTORNEY FOR PETITIONER
Bruno Gerbino & Soriano, LLP
445 Broad Hollow Road, Suite 220
Melville, New York 11747

ATTORNEYS FOR RESPONDENT
Buttafuoco & Associates, PLLC
144 Woodbury Road
Woodbury, New York 11797

United Services Automobile Association
P.O. Box 659476
San Antonio, Texas 78265

The following matter came before the Court for a Framed Issue Hearing to determine whether the policy of automobile insurance issued to the respondent by the petitioner was in effect on March 18, 2013, the date of loss.

The respondent, Erick Ramos, alleges that he sustained personal injuries on March 18, 2013, when the vehicle owned and operated by himself, which was stopped on northbound Route 112 waiting to make a left turn onto Pauls Path, Brookhaven, New York, was struck in the rear by another vehicle and then pushed into the vehicle in front of his. On or about December 2, 2016, the petitioner received respondent's Demand for Arbitration of underinsured motorist benefits under a policy issued to Ramos by Nationwide Affinity Insurance Company of America ("Nationwide").

Petitioner brought the instant proceeding seeking to permanently stay the arbitration, or in the alternative, to temporarily stay the arbitration, join all necessary parties, and conduct a hearing in order to determine the issue of whether the policy issued to Ramos by Nationwide was in effect on the date of the accident. The petitioner alleges that the subject Nationwide policy was cancelled pursuant to the request of Ramos and by operation of law when Ramos procured a policy of insurance with United Services Automobile Association ("USAA"), which became effective at 12:01 a.m. on March 13, 2013.

In opposition to the petition, the respondent contends that although he had requested a cancellation of the Nationwide policy on March 18, 2013, he had rescinded said request within twenty four hours, and that there had never been an effective cancellation of the policy. As a result, respondent maintains that his vehicle was covered by both the Nationwide policy, as well as a second policy that he had obtained with USAA.

Based on the foregoing, the Court found that the evidence before it was insufficient to determine

whether the Nationwide policy had been cancelled and if respondent is eligible for SUM arbitration coverage as there is collectible insurance on the subject vehicle through USAA. The Court then temporarily stayed the uninsured motorist arbitration demanded by the respondent and set the matter down for a Framed Issue Hearing.

At the time of the Hearing, the respondent, Erick Ramos offered the following testimony:

Erick Ramos originally obtained policies for homeowner's insurance and automobile insurance from Nationwide Affinity Insurance Company of America ("Nationwide") in 2007 or 2008. The automobile policy provided coverage for all three of his vehicles, including a 2011 Nissan Maxima, with \$300,000.00 for bodily injury liability coverage and \$300,000.00 for supplemental uninsured and underinsured coverage. In an attempt to lower the cost of his premium, on March 13, 2013, Ramos obtained a policy of automobile insurance with United Services Automobile Association ("USAA") via phone service. The USAA policy provided coverage for the three vehicle which were covered under the Nationwide policy.

On the afternoon of March 18, 2013, Ramos advised Charles J. Bottitta, his insurance agent, that he had changed insurers to USAA, and faxed his request to cancel the Nationwide policy to Bottitta at 3:21 p.m. that day. He did not recall the substance of his conversation with his agent. At approximately 7:15 p.m. on March 18, 2013, Ramos was involved in a motor vehicle accident in which he and his daughter were injured. At the time of the accident he was driving the 2011 Nissan Maxima. At the scene of the accident, Ramos provided the police with the information from the USAA policy and identified USAA as the insurer of his vehicle.

On March 19, 2013, Ramos advised his agent that he had been involved in an automobile accident the day before. He personally presented the agent with a Request for Rescission of Cancellation dated March 18, 2013 at that time. Ramos confirmed that on March 18, 2013 at 3:21 p.m. it was his intention to cancel his policy with Nationwide and to accept coverage with USAA.

Ramos testified that he never contacted Nationwide directly to advise of his cancellation of the existing policy, and was never contacted by Nationwide with regard to his March 18, 2013 request for cancellation of the policy. He further testified that he was never contacted by his agent to confirm the cancellation of the Nationwide policy.

Charles J. Bottitta of the Charles J. Bottitta Insurance Agency testified that he had helped Erick Ramos secure policies for homeowners and automobile insurance through Nationwide, as his agency was an independent contractor with Nationwide Insurance. The last six month renewal of the automobile insurance policy occurred on February 17, 2013. The vehicle operated by Ramos that was involved in the subject accident was covered under the existing Nationwide policy. Bottitta was contacted by Erick Ramos via a phone call on March 18, 2013, in which Ramos advised him that Ramos wished to cancel the Nationwide policy as he had purchased a policy with USAA for a lower premium. After a discussion of the differences in coverage between the policies, Bottitta advised Ramos against making the change. Bottitta asked Ramos to put his request in writing and provide Bottitta with copies of the ID cards from USAA to show the effective dates for the policy. Ramos faxed a letter to Bottitta requesting a cancellation of the Nationwide policy at 3:21 p.m. on March 18, 2013. Bottitta also received a copy of the declarations page for the USAA policy, but Ramos did not provide him with a copy of the USAA ID cards.

Ramos appeared at Bottitta's office on March 19, 2013 and indicated that he wished to rescind his cancellation letter of the day before and continue his coverage with Nationwide. Bottitta testified that at the time of this request, Ramos had not revealed that he had been in a motor vehicle accident on the previous evening. Bottitta stated that he first learned of the accident later in the day on March 19, 2013 or sometime the following day, but subsequent to the time that Ramos had provided him with the letter

requesting a rescission of the cancellation. Bottitta testified that because he had not received the requested ID cards from USAA, he had not formally notified Nationwide of Ramos's request for cancellation of the Nationwide policy.

The undisputed facts adduced at the Hearing demonstrate that Erick Ramos had been insured under a policy of automobile insurance issued by Nationwide. On March 13, 2013, in an attempt to lower his premium, Ramos, on his own, obtained a policy of automobile insurance from USAA, providing coverage for the same vehicles insured by the Nationwide policy. On the afternoon of March 18, 2013, Ramos contacted his insurance agent, Charles Bottitta, to advise him that he had purchased the policy from USAA and desired to cancel the Nationwide policy. The USAA policy was to insure the same vehicles and operators as identified in the Nationwide policy. On the evening of March 18, 2013, Ramos was involved in a motor vehicle accident, while operating a vehicle that was covered by the USAA policy. At the scene of the accident, Ramos advised the responding police officer that the insurer of his vehicle was USAA. On March 19, 2013, Ramos notified Bottitta that he wanted to rescind the cancellation of the Nationwide policy and also that he had been in a motor vehicle accident the previous evening. Ramos testified that when he notified Bottitta on March 18, 2013 to cancel the Nationwide policy, it was his intention to cause the cancellation of that policy and replace it with coverage provided under the policy issued by USAA. This intention is confirmed by his representation to the police that his vehicle was insured by USAA.

Accordingly, the Court concludes that at the time of loss, Erick Ramos had intended to, and did in fact expressly cancel the policy of automobile insurance issued to him by Nationwide and accept coverage for the subject vehicle under a policy of insurance issued to him by USAA. Under the circumstances presented and based upon respondent's actions and stated intention, there was an effective cancellation of the Nationwide policy. "A supervening policy of liability insurance terminates a prior insurer's obligation to indemnify irrespective of the prior insurer's noncompliance with the notice requirements of section 313 of the Vehicle and Traffic Law." Employers Commercial Union Ins. Co. v. Firemen's Fund Ins. Co., 45 N.Y.2d 608, 611. Since Ramos intended to, and did cancel the Nationwide policy and accept coverage with USAA, Nationwide has demonstrated its entitlement to a permanent stay of the underinsured motorist arbitration demanded by Ramos.

Inasmuch as it is the finding of this Court that the policy of automobile insurance issued to the respondent, Erick Ramos, by United Services Automobile Association superceded the policy of insurance issued by petitioner, Nationwide Affinity Insurance Company of America, and was in effect on March 18, 2013, the date of loss of the subject motor vehicle accident, it is

ORDERED, that the petition of Nationwide Affinity Insurance Company of America, pursuant to CPLR 7503(c), for an Order permanently staying the underinsured motorist arbitration demanded by respondent based upon the fact that the vehicle operated in the subject incident by Erick Ramos was insured by United Services Automobile Association under policy number 014903025U71026, policyholder, Erick Ramos-Huertas, is granted.

The foregoing constitutes the Order of this Court.

Dated: September 6, 2018


HON. DENISE F. MOLIA A.J.S.C.