

CBCA Adm'rs., Inc. v Aleman

2007 NY Slip Op 32409(U)

July 26, 2007

Supreme Court, Suffolk County

Docket Number: 0025138/2006

Judge: Paul J. Baisley

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SHORT FORM ORDER

INDEX NO. 025138/2006

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:**Hon. Paul J. Baisley, Jr.** _____

 CBCA Administrators, Inc., as Plan Administrators
 For American Technical Ceramics Corp., and
 Hartford Insurance Company, Stop-Loss carriers
 for American Technical Ceramics.

Plaintiff(s),

-against-

MANUEL ALEMAN

Defendant(s).

ORIG. RETURN DATE: January 17, 2007**FINAL RETURN DATE:** April 16, 2007**MTN. SEQ. #:** 001 - CASEDISP**MTN. SEQ. #** 002 - MD and**MTN. SEQ. #:** 003 - MD**PLTF'S ATTORNEY:**

D'ARCAMBAL LEVINE & OUSLEY,LLP
 40 FULTON ST, STE 1005
 NEW YORK, NY 10038

DEFT'S ATTORNEY:

CANNON & ACOSTA, LLP
 1923 NEW YORK AVENUE
 HUNTINGTON STA., NY 11746

DEFT'S ATTORNEY:

MARTIN, FALLON & MULLÉ, ESQS.
 100 EAST CARVER STREET
 HUNTINGTON, NY 11743

Upon the following papers numbered 1 to 82 read on this motion and these cross motions for summary judgment: Notice of Motion and supporting papers 1 - 12; Notice of Cross Motion and supporting papers 13 - 24; Affirmation in Opposition and supporting papers 25 - 34; Reply Affirmation 35 - 39; Second Notice of Cross Motion and supporting papers 40 - 65; Affirmations in Opposition and supporting papers 66 - 76; Affirmation in Reply 77 - 82; it is

ORDERED that this motion (001) by the defendant Jonathan M. Rosen is decided to the extent that that part of this motion which seeks summary judgment dismissing the complaint in the principal action is granted and the complaint is dismissed in its entirety; that part of this motion seeking a hearing on causality is denied as moot; that part of this application seeking costs is denied except for the fixing of costs as a matter of right pursuant to the CPLR; and, in view of this dismissal, the third-party complaint must also be and is dismissed; and it is further

ORDERED that this cross motion (002) by the plaintiffs in the principal action for summary judgment in their favor is denied as moot in light of the dismissal of the complaint as provided herein; and it is further

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ORDERED that this second cross motion (003) by the third-party defendant for summary judgment is denied as moot in view of the third-party action being dismissed as provided herein.

The motion and two cross motions decided herein all stem from the settlement of a personal injury case arising out of a two-car motor vehicle accident. Manuel Aleman (hereinafter Aleman) was the defendant in the underlying personal injury action; he is the defendant/third party plaintiff in the pending actions. In that underlying personal injury action, Manuel was a passenger in a car and the settlement (in the amount of \$350,000.00) was reached with the insurance companies representing the respective owners and drivers.

The plaintiffs herein, collectively referred to as CBCA, are the plan administrators ("CBCA Administrators Inc.") and the "Stop-Loss" carriers ("Hartford Insurance Company") for the self-funded, employer-sponsored employee welfare benefits plans of American Technical Ceramics Corp., the employer of Aleman's wife, under whose plans Aleman received health benefits coverage.

Before the accident (which occurred on May 3, 2003), Aleman had prior medical problems including surgeries to a knee and the lumbar region of his spine. After the accident he was diagnosed as suffering some sprains or strains related to the accident for which he received some physical therapy and for which he was found (according to all the doctors' narratives and affirmations submitted herewith) to be fully recovered and requiring of no further treatment.

As to subsequent surgeries in 2004 to his spine and left shoulder, there is no evidence that those health problems were related to the 2003 accident.

Aleman contends that any accident-related health expenses were to be covered by the No-Fault insurance provider, Royal and Sun Alliance (hereinafter Royal) and any non-accident related health expenses were and are to be covered by CBCA.

According to Aleman's counsel (and supported by copies of correspondence to CBCA and related entities pre-dating the settlement), the settlement amount was only for "pain and suffering" and expressly not for any medical expenses. Indeed, the correspondence not only indicates this but also suggests to CBCA its remedies in this regard as to Royal and that Aleman would fully cooperate with any such endeavors.

CBCA's position is that the provisions of the applicable health plans which Aleman was a beneficiary of and bound by, provide that regardless of what any settlement may or may not indicate, any settlement monies received by the "covered person" are the "first dollar priority [to CBCA] over any and all recoveries . . . **relative to the injury** . . ." and that such a settlement "shall first be deemed for reimbursement of medical expenses paid by the plan . . ." for "**injuries which may be caused by the act . . . of a Third Party** . . ." (quoted from the applicable Plans; emphasis provided).

The principal action here is brought by CBCA against Aleman for reimbursement from the settlement funds of the medical expenses CBCA covered (i.e., \$112,951.74). Aleman, in turn, brought the third-party action against Royal for indemnification in the event he is found liable for the reimbursement to CBCA.

Aleman has brought the instant motion (001) for summary judgment claiming that the settlement did not provide for any medical expenses, that CBCA was informed of this, that CBCA's claim, if any, should be against Royal and that, most importantly, the medical expenses covered by CBCA were for health matters unrelated to the accident. In the alternative, Aleman is asking for a hearing as to causality of the injuries for which Aleman received treatment and which costs were appropriately covered by CBCA as well as asking for costs in this action.

In response to this motion, CBCA has cross-moved for denial of Aleman's motion and for summary judgment in its favor based upon the contention that the injury expenses for which CBCA paid were actually related to the 2003 accident and, thus, should be the responsibility of Aleman from the settlement monies received from the tortfeasors and not CBCA.

The second cross motion (003) was brought by the third-party defendant, Royal, claiming, inter alia, that it is entitled to summary judgment dismissing the third-party complaint on the basis, inter alia, of the general release signed by or on behalf of Aleman in the settlement of the underlying personal injury action.

Among the parties, there is no apparent disagreement for the proposition that no person or entity should receive the benefit of double reimbursements for any expenses and no person or entity should have to make payments duplicating payments already paid and received (*see e.g. Teichman by Teichman v Community Hosp.*, 87 NY2d 514, 523, 640 NYS2d 472, 476 [1996]).

The major difference here, however, is that CBCA takes the position that the settlement included amounts for the medical expenses it already paid on Aleman's behalf and, even if it did not, by agreement it has the right to reimbursement from such funds for medical expenses it covered related to the accident. In opposition, Aleman claims that the settlement not only did not include any coverage for any medical expenses whatsoever but that the medical expenses covered by CBCA were not in any way for injuries related to the accident.

On a motion for summary judgment, the moving party has the burden of making a prima facie showing of entitlement to summary judgment as a matter of law and must offer sufficient evidence to show the absence of material issues of fact (*Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). If the moving party fails in meeting this burden, the motion must be denied. If, however, this burden is satisfied, then the burden shifts to the opposing party to establish the existence of material issues of fact requiring a trial (*see Zuckerman v City of New York, supra*).

Aleman's Motion for Summary Judgment:

In support of Aleman's motion for summary judgment, he contends that since the settlement was only for "pain and suffering" and not for medical expenses, either CBCA should be responsible for the medical expenses (if not accident related) or Royal should be (if accident related) but, in no event, should it be his responsibility. Furthermore, CBCA's remedy is to seek arbitration with Royal. Alternatively, Aleman requests a hearing to determine causality to determine if CBCA has any right of recovery, either against Aleman or Royal.

In further support of this application, Aleman has submitted correspondence evidencing notice to CBCA of the nature of the settlement (expressly not including medical expenses) and mention of the remedies available to CBCA as well as Aleman's offer of full cooperation with CBCA. In addition, the submissions from the various doctors (some affirmed) and a chiropractor (affirmed but not sworn to [*see* CPLR 2106]) - cited to and relied upon by both CBCA and Aleman - were reviewed by the court and, contrary to CBCA's contention, all support the allegations by Aleman that the accident related injuries were merely sprains or strains which were fully resolved and not of a permanent nature and that the subsequent surgeries (spine and shoulder) were for injuries not related to the accident.

Accordingly, Aleman has satisfied his burden of making a prima facie entitlement to summary judgment (*see Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

CBCA, in opposition, somehow interprets the medical submissions as supporting its contention that the medical expenses it covered were for accident related injuries. The court, however, finds this interpretation to be self-serving and without merit. Furthermore, as to CBCA's contention that the provisions of the applicable plans permit CBCA to be reimbursed from the settlement funds for expenses it paid related to injuries suffered in the underlying accident - a contention the court agrees with - the court finds that CBCA has failed to come forward with any evidence in admissible form to rebut the showing of Aleman as to the injuries being non-accident related or to establish the existence of any material issues of fact in this regard (*see Zuckerman v City of New York, supra*).

Accordingly, summary judgment is granted to Aleman and the complaint in the principal action herein is dismissed in its entirety.

CBCA's Cross Motion for Summary Judgment:

In light of the dismissal of CBCA's complaint herein, CBCA's cross motion for summary judgment is denied as moot. In any event, the same contentions, unsupported by any admissible evidence in opposition to Aleman's motion for summary judgment, are raised in support of this cross motion for summary judgment in CBCA's favor. The deficiencies of CBCA's submissions in raising any issues of fact in opposition to Aleman's motion for summary judgment would also apply to its cross motion for summary judgment and would require denial of same.

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Royal's Cross Motion for Summary Judgment (Third-Party Action):

In view of the complaint in the principal action being dismissed herein, there is no longer a viable third-party cause of action for indemnification against Royal. Accordingly, the third-party complaint is dismissed in its entirety, the court need not address the merits of this cross motion and this cross motion for summary judgment is denied as moot.

This decision constitutes the order of the court.

Dated: *July 26, 2007*

HON. PAUL J. BAISLEY, JR.

HON. PAUL J. BAISLEY, JR., J.S.C.