

Matter of Old Republic Ins. Co. v American Airlines
2014 NY Slip Op 31742(U)
July 1, 2014
Sup Ct, New York County
Docket Number: 654204/13
Judge: Manuel J. Mendez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

In the Matter of Arbitration between
OLD REPUBLIC INSURANCE COMPANY,
Petitioner,

INDEX NO. 654204 /13

- Against-

MOTION DATE 05-28-2014

AMERICAN AIRLINES,
Respondent,

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to 8 were read on this petition Pursuant to CPLR 7510 confirming an arbitration award.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4, 5-6</u>
Replying Affidavits _____	<u>7-8</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is ordered that this petition to confirm the first arbitration award and vacate the second arbitration award is granted to the extent of vacating the second arbitration award. The cross-petition to enforce the settlement agreement of March 5, 2013, to vacate the first arbitration award and to confirm the second arbitration award is granted to the extent of enforcing the settlement agreement and vacating the first arbitration award.

This petition was filed in connection with a personal injury protection (PIP) loss transfer arbitration related to a personal injury claim filed by an American Airlines employee who was allegedly injured in a fall while exiting a vehicle insured by Petitioner, Old Republic, on February 6, 2010. American Airlines paid Workers Compensation benefits to the employee and thereafter, on January 15, 2013, through Sedgwick CMS by Nathan Osborne, its Third-party administrator, initiated arbitration with Arbitration Forums, Inc., to recover the Workers Compensation benefits paid in the amount of \$28,891.53. Evidentiary materials were to be submitted to Arbitration Forums, Inc., by February 28, 2013 and the last date to re-schedule the hearing was March 5, 2013.

After Mr. Osborne- a Subrogation Claims Recovery Examiner for Sedgwick CMS- commenced arbitration on behalf of American Airlines he engaged in settlement discussions with Jennifer Gedde - also a Claims Representative at Sedgwick- who was the agent for Old Republic. In a series of e-mails the following interchange took place:

From: Osborne, Nathan
Sent: Tuesday March 05, 2013
To: Gedde, Jennifer

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Subject: American Airlines Sedgwick claim # YMK C 08923 Your Claim#002586-038394-AM-01

"Jennifer ,

I have discussed this with my client and they will agree to settle our lien for \$24,000.00. Please advise if this is acceptable.

Thank you

Nathan D. Osborne / claims Recovery Examiner, Subrogation/"

From: Gedde, Jennifer

Sent: Tuesday March 05, 2013

To: Osborne, Nathan

Subject: RE: American Airlines Sedgwick Claim# YMK C 08923 Your Claim#002586-038394-AM-01

"Ok, I will request my reserves and have payment issued. Can you send me something official.

Thanks,

Jennifer Gedde / Claims Representative Sedgwick"

From: Osborne, Nathan

Sent: Tuesday March 05, 2013

To: Gedde, Jennifer

Subject: RE: American Airlines Sedgwick Claim#YMK C 08923 Your Claim#002586-038394-AM-01

"Attached is our Settlement letter.

Thank you

Nathan D. Osborne / Claims Recovery Examiner, Subrogation /"

The Settlement letter dated March 05, 2013 from Nathan D. Osborne to Jennifer Gedde memorialized the terms of the settlement and requested that a draft be issued and sent to Sedgwick "for the specified settlement amount of \$24,000.00."

Mr. Osborne did not supplemented the evidence by the due date of February 28, 2013, request a re-scheduling of the hearing on March 5, 2013 or withdraw the arbitration after settlement. Arbitration Forums Inc., referred the matter to Brendan Donegan who on March 15, 2013 decided the matter against American Airlines for their failure to prove liability. On July 3, 2013 American Airlines filed a second arbitration claim with Arbitration Forums Inc., regarding the same PIP claims and the same parties. On September 10, 2013 arbitrator Jean Fazzino rendered an award for American Airlines in the amount of \$28,891.53.

Old Republic now seeks to confirm the First Arbitration decision and to vacate the second arbitration decision on the grounds that this second award is null and void in view of the first arbitration decision. It argues that Arbitration Forums Inc., erred in processing or allowing the second arbitration involving the same parties and the same claim and that this second arbitration should have been precluded by the res Judicata effect of the first arbitration decision. American Airlines seeks to enforce the settlement or in the alternative to vacate the First Arbitration decision and confirm the Second Arbitration decision.

The second arbitration decision rendered on the same claim, involving the same parties should be vacated based on the principle of res Judicata. "An arbitrator exceeds his or her power by conducting a hearing and making an award premised on the same claim as a prior award, which, unless vacated, is complete, final and binding, even if the prior award was never judicially confirmed." (Motor Vehicle Accident Indemnification Corporation v. Travelers, 246 A.D.2d 420, 667 N.Y.S.2d 741 [1st. Dept. 1998]). "This second arbitration is barred by the doctrine of res judicata as it involved the same parties and precisely the same issues" (Pinnacle Environment Systems, Inc., v. Cannon Building of Troy Associates, 305 A.D.2d 897, 760 N.Y.S.2d 253 [3rd. Dept. 2003]).

Pursuant to CPLR § 7510 "the court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." Old Republic argues that since none of the grounds specified in CPLR § 7511 for vacating or modifying an arbitration decision apply to the March 15, 2013 decision of arbitrator Brendan Donegan, that decision should be confirmed. American Airlines argues that the decision should be vacated because on March 5, 2013 -prior to the hearing of March 15, 2013- the parties settled their dispute.

CPLR§ 2104 STIPULATIONS, states: " an agreement between parties or their attorneys relating to any matter in action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered..." "An exchange of correspondence between counsel may constitute a binding stipulation pursuant to CPLR 2104" (Wronka v. GEM Community Mgt., 49 A.D.3d 869, 854 N.Y.S.2d 474 [2nd. Dept. 2008] holding exchange of correspondence was sufficient to constitute enforceable stipulation in Third-party action where material terms of stipulation were set forth in letter from counsel for insurer to counsel for defendants and confirmed in reply from counsel for defendants to counsel for insurer). Similarly e-mail exchanges between counsel, which contain their printed names at the end, constitute signed writings (Williamson v. Delsener, 59 A.D.3d 291, 874 N.Y.S.2d 41, [1st. Dept. 2009]).

"Where an e-mail message contains all material terms of a settlement and a manifestation of mutual accord, and the party to be charged, or his or her agent, types his or her name under circumstances manifesting an intent that the name be treated as a signature, such an e-mail message may be deemed a 'subscribed' writing under governing statute, so as to constitute an enforceable agreement (see CPLR 2104; Forcelli v. Gelco Corporation, 109 A.D.3d 244, 972 N.Y.S.2d 570 [2nd. Dept. 2013] holding that e-mail message to plaintiff's counsel from automobile insurer's claims adjuster, confirming oral settlement between insurer and plaintiff, constituted a binding written settlement agreement, as required to be enforceable under governing statute).

The e-mail exchange between Nathan Osborne on behalf of American Airlines and Jennifer Gedde on behalf of Old Republic contain all material terms of a settlement and a manifestation of mutual accord. Nathan Osborne offered to settle the claim for \$24,000.00 and Jennifer Gedde accepted the offer when she replied in her e-mail " Ok, I will request my reserves and have payment issued." The fact she requested something "official" is irrelevant. She manifested accord to the settlement of \$24,000.00 dollars and typed her name at the bottom as a signature. This e-mail message, couple with the settlement letter correspondence is a "subscribed" writing under the statute

