

New York Cent. Mut. Fire Ins. Co. v Murphy

2021 NY Slip Op 33792(U)

July 30, 2021

Supreme Court, Dutchess County

Docket Number: Index No. 2020-52658

Judge: Hal B. Greenwald

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This opinion is uncorrected and not selected for official publication.

At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on July 30, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
NEW YORK CENTRAL MUTUAL FIRE INSURANCE
COMPANY as subrogee of STEPHEN ABEL
Plaintiff

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-against-

AUBREY L. MURPHY and COLIN M. WALKER
Defendant

DECISION AND ORDER
(Motion Sequence 1)

-----X
Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Defendant MURPHY's Notice of Motion for Summary Judgment:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Affirmation of Joel Appelbaum, Esq./ Exhibits A-D	1
Affirmation of Daniel Coffey, Esq. in Opposition	2
Reply Affirmation of Joel Appelbaum, Esq./Exhibit A	3
OTHER: Certificate of Authenticity for judgment of the Arbitration dated April 21, 2021 by Tim McKernan	4

RELEVANT BACKGROUND

The parties having fully submitted papers and opposition to the Defendant, Aubrey Murphy's Notice of Motion for summary judgment in her favor and the required Defendant to submit an authenticated arbitration decision and/or an affidavit of the arbitrator in reference to its decision, a signed agreement to arbitration or transcript, on or before May 3, 2021; and granted Plaintiff the opportunity to respond to the supplemental papers of Defendant on or before May 21,

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2021. Defendant submitted a certificate of authenticity of the arbitration decision and agreements. Plaintiff submitted no further opposition papers.

The pending motion is based on *res judicata*. Defendant Murphy states an arbitration decision was rendered in its favor, finding Defendant to have zero (0%) percent liability for the collision and property damage. On or about June 13, 2019, there was a vehicle collision on North Clove Road in Union Vale, Dutchess County, New York, which involved Defendant Colin J. Walker ("Walker") who was operating an RTV utility vehicle owned by Plaintiff's insured Stephen Abel and Defendant Aubrey Murphy who was operating a Ford van. Plaintiff alleged that Defendant Murphy was negligent, driving at an excessive rate of speed at the time, failed to slow down or take any evasive action to avoid the collision. As a result of the collision, the RTV was damaged and destroyed, and the insurance company made payment for the claims related to the action to Mr. Abel and based on the subrogated rights of its insured filed the instant action against Defendants to for damages in the amount \$15,799.50.

Defendant Murphy's insurance company is Erie Insurance Company and Plaintiff's insurance company is New York Central Mutual Fire Insurance Company. Both companies entered into a nationwide inter-company arbitration agreement, whereby the insurers agreed to arbitrate disputes among themselves and forego litigation. *See*, NYSCEF Doc. 23. Murphy states that the issue of property damage, resulting from a motor vehicle collision on June 13, 2019 was addressed in arbitration, and a determination was rendered on April 9, 2020, thus the instant action against her is for the same issues and precluded by *res judicata*.

Plaintiff argues that the parties in the pending action and the issues are not the same as addressed in arbitration, thus the doctrines of *res judicata* and issue preclusion are inapplicable in this instance. Plaintiff contends that the present action includes Colin M. Walker as an additional defendant and the liability of Murphy versus Walker must be determined in this separate proceeding.

DISCUSSION

The proponent of a motion for summary judgment must make a *prima facie* showing, by the tender of sufficient admissible evidence, that there are no material issues of fact in dispute, and that it is entitled to summary judgment as a matter of law. All evidence must be viewed in the light most favorable to the opponent of the motion. *See, Govt. Employees Ins. Co. v Town of*

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Oyster Bay, 26 Misc.3d 34, 37 (App. Term 2009).

It is well settled that a plaintiff suing as a subrogee is subject to whatever rules of estoppel would apply to the insured. Thus, if plaintiff would be barred by the doctrine of res judicata from commencing an action against defendant to recover for the property damage caused by his alleged negligence, then the plaintiff's subrogation action—at least to the extent that it seeks to recover amounts paid to the insured would likewise be barred. See, Employers' Fire Ins. Co. v Brookner, 47 A.D.3d 754, 755-56 (2nd Dept. 2008). The determination made in a property damage arbitration proceeding between two insurance carriers disallowing the disclaimer of coverage by one of them is binding in a controversy between the same carriers in a subsequent personal injury action arising out of the same accident. See, Am. Ins. Co. v Messinger, 43 N.Y.2d 184, 187 (1977).

Plaintiff's arguments lack merit. Plaintiff seeks to recoup payment made to its insured for damages to Mr. Abel's RTV vehicle. Plaintiff has not demonstrated how its attempt to collect from Defendant in this action is different from its attempt to collect from Defendant's insurer in the arbitration. Just as Plaintiff is suing as a subrogee, Defendant and its insurer have the same relationship. The nuance of the name changes in the caption did not change the character of the parties. There is no basis for the insured Defendant in the instant matter to not receive the benefit of her insurance, covering any liability for damages proven. Thus, Plaintiff is in essence suing Defendant's insurance company for the same issue in the instant action.

Plaintiff alleges that it was Defendant's Murphy's negligence that caused the collision. Despite this being Plaintiff's position, and its assertion that the comparative negligence of the two Defendants must be determined, this issue of who was responsible for the accident has been determined by the arbitration. The arbitration judgment states that based on the evidence, the Defendant Walker, who drove the RTV insured by Plaintiff with permission of Mr. Abel, failed to yield the right of way. Plaintiff has failed to demonstrate a basis for this Court to view the issues or parties as different from that determined by arbitration. Plaintiff's action is seeking a second bite at the apple against Defendant Murphy for the same issues, as it relates to the same parties, and arises from the same incident. Res judicata applies, and a such Defendant Murphy's application for summary judgment in its favor, based on an arbitration judgment, having decided said issues is **granted**.

Accordingly, it is hereby,

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ORDERED, that Defendant Aubrey Murphy's Motion for Summary judgment is granted; and it is further

ORDERED, that the caption be amended to delete Defendant Aubrey Murphy from the caption; and it is further

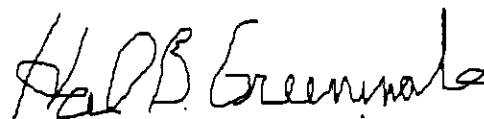
ORDERED, that Plaintiff shall have thirty (30) days to submit its application in furtherance of this action against the Defendant Colin Walker.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: July 30, 2021
Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.