

American Tr. Ins. Co. v Preferred Med. P.C.

2025 NY Slip Op 33821(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 510009/2022

Judge: Lisa S. Ottley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

KINGS COUNTY CLERK
FILED

-----x

AMERICAN TRANSIT INSURANCE COMPANY,

2025 OCT -3 A 9:38
Mot. Seq. # 11 and 15

Plaintiff,

Index # 510009/2022

-against-

DECISION AND ORDER

PREFERRED MEDICAL P.C. a/a/o RUBINSKY PADILLA,

Defendant.

-----x

HON. LISA S. OTTLEY, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion to Confirm Arbitrator’s Award Cross-Motion for Summary Judgment submitted December 9, 2024.

| Papers | Numbered |
|--|-----------------------|
| Notice of Motion & Affirmation..... | 1&2 [Exh. A-E] |
| Notice of Cross-Motion & Affirmation/Affidavits..... | 4&5; 6 and 7 [Exh. A] |
| Memorandum of Law in Opposition to Cross-Motion..... | 8 |
| Reply Memorandum..... | 3 [Exh. A-D] |

Plaintiff, American Transit Insurance Company, commenced this action pursuant to Insurance Law 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii) to seek de novo review of an arbitral award issued by a master arbitrator. The master arbitrator award was in favor of the defendant in the amount of \$9,759.12. Defendant moves pursuant to CPLR 3212(b) for an order confirming the master arbitration award that affirmed the lower arbitration award and for attorney’s fees, costs and disbursements. Plaintiff cross-moves for an order pursuant to CPLR 3212 granting summary judgment in plaintiff’s favor on the grounds that its peer review establishes that the services were not medically necessary. Defendant opposes plaintiff’s motion for summary judgment on the grounds that the arbitration award has a res judicata and collateral estoppel effect and is binding and that the defendant established that the injuries are related to the accident and medically necessary.

First, a de novo action which seeks to address disputed no-fault insurance invoices must be litigated as though the arbitration hearing and the master arbitration never took place. In fact, the determinations of the arbitrators are irrelevant. The court’s jurisdictional basis is that the monetary result of the arbitration is provided based on the monetary result of the arbitration which is a minimum award of \$5,000.00. As indicated above, the amount of the award in this matter exceeded the minimum award. See, Matter of Greenberg [Ryder Truck Rental], 70 N.Y.2d 573, 523 N.Y.S.2d 67 [1987]; Matter of Acuhealth Acupuncture, P.C.

v. Country-Wide Ins. Co., 176 A.D.3d 800, 112 N.Y.S.3d 767 (2nd Dept., 2019); Matter of Capuano v. Allstate Insurance Co., 122 A.D.2d 138, 504 N.Y.S.2d 523 (2nd Dept., 1986).

Summary Judgment

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). “Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action.” See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, Marine Midland Bank, N.A. v. Dino v. Artie’s Automatic Transmission Co., 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212[b]; Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

The parties’ attorneys have been litigating aggressively and are no strangers to the arguments raised herein and throughout the cases which have been appearing before this court. One argument that continues to be raised by plaintiff is the defendant’s failure to comply with CPLR’s basic requirement when moving for summary judgment since defendant does not annex an affirmation or affidavit from a person with personal knowledge of the facts, which it argues is insufficient to establish a claim on the merits. Here, as in other motions that are pending or have been decided by this Court, the defendant’s motion for summary judgment confirming the arbitration award and opposition to plaintiff’s motion for summary judgment is supported by an attorney affirmation only.

The defendant’s attorney’s affirmation which lacks probative value and does not provide documentary evidence in support of its opposition, fails to raise a material issue of fact and is insufficient to defeat plaintiff’s motion for summary judgment. See, Zuckerman v. City of New York, *supra*; Pryhuber v. Maffucci Storage Corp., 170 A.D.2d 660, 567 N.Y.S.2d 81 (2nd Dept. 1991). Specifically, although the defendant’s attorney argues that it is entitled to summary judgment on the evidence in that the plaintiff failed to timely or properly deny the bills, the attorney did not attest to personally mailing the NF-3 claim form (bill) or to receiving an appurtenant NF-10 denial. Therefore, the defendant failed to establish that he had personal knowledge to authenticate the first step, which is that the bills were submitted to the plaintiff. See, American Transit Company v. Advanced Orthopaedics PLLC, 86 Misc.3d 1234(A), 234 N.Y.S.3d 928 (Sup. Ct., Kings Co., 2025).

Although this court need not assess the sufficiency of the plaintiff’s opposition due to defendant’s failure to make out a *prima facie* case of entitlement to summary judgment in this *de novo* action, the court will address the argument as to whether the arbitration award is binding based upon *res judicata* and *collateral estoppel*.

Defendant argues that the arbitration award is binding and has a res judicata and collateral estoppel effect, and the de novo action requires an application to the court within ninety (90) days of the mailing of the master arbitration award. Specifically, defendant argues that the question is whether an award from a binding arbitration involving the same assignor, same loss, and same insurance company constitutes collateral estoppel or res judicata. As such, defendant argues that the master arbitration award must be confirmed, and entitlement to attorney's fees and costs. In opposition, plaintiff argues that once its de novo action was commenced there is no longer an award entitled to collateral estoppel, and the issues are litigated from the beginning and the prior ruling no longer exists. Plaintiff further argues that confirmation of the arbitration award is unavailable to the defendant because it failed to plead a cause of action against plaintiff since no proceeding against the plaintiff to confirm the award has been commenced. In addition, plaintiff argues that the issue before the court is whether the surgery was medically necessary and defendant's motion for summary judgment must be denied because triable issues of fact exist as to whether the services provided were medically necessary. Plaintiff also argues that summary judgment is premature because discovery from defendant is incomplete.

After careful review of the moving papers, opposition and reply the court finds as follows:

Since this dispute was initially submitted to the American Arbitration Association, the plaintiff had ninety (90) days from the date the master arbitrator's award was mailed to it to commence a trial de novo. See, Insurance Law 5106(c); CPLR 7511; 11 NYCRR 65-4.10[h][2]. In the case at bar, defendant argues that the issue is whether there is a binding effect of the master arbitration award based on res judicata or collateral estoppel. This court finds that the plaintiff timely invoked its right to a de novo review by the Supreme Court pursuant to the applicable law, which allows for review of an arbitral award issued by a master arbitrator. See, AutoOne Insurance Co. v. Eastern Island Medical Care, P.C., 141 A.D.3d 499, 35 N.Y.S.3d 230 (2nd Dept., 2016), which held as follows: "The plaintiff exhausted its demand for review by a master arbitrator, and the master arbitrator issued an award which was final and binding **except**, as is relevant here, where a party commences a court action to adjudicate the dispute de novo when the award is \$5,000 or more (see, 11 NYCRR 65-4.10[h][1])." [*Emphasis added*] Therefore, the court does not find that the arbitration award has a res judicata or collateral estoppel effect.

Based upon the foregoing, the court hereby denies the defendant's motion for summary judgment which seeks to confirm the master arbitration award.

Next, this court will address the plaintiff's cross-motion for summary judgment which argues that it should be granted summary judgment on the issue of medical necessity. The court notes that the plaintiff's cross-motion was supported by affidavits from persons with personal knowledge as to the procedure and practice for bills received and the issuance of denials. Plaintiff in support of their claim for lack of medical necessity, submitted the independent peer review of Dr. Thomas Nipper, who opined that there was no causally related medical necessity for the right knee orthoscopy, synovectomy, partial medial and lateral meniscectomy, release of medial plica and PRP injection of the right knee, and that

any derivative services were also not medically necessary. In opposition, defendant submitted the medical report of Dr. Paul Ackerman, who opined that the surgery was medically necessary to the post accident care of the patient, and that the tears were post-traumatic not degenerative. Here, defendant's opposition consisted of evidentiary proof and objective findings to raise a triable issue of fact. Therefore, considering the conflicting expert opinions, the court finds that triable issues of fact have been raised, which preclude summary judgment from being granted. *See, Wilcoxon v Palladino*, 122 A.D.3d 727, 996 N.Y.S.2d 191 (2nd Dept., 2014).

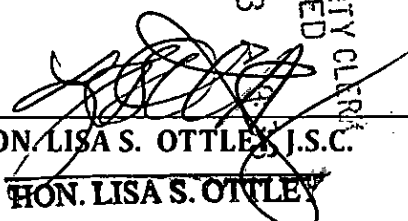
Based upon the foregoing, the court finds that there are issues of fact which preclude summary judgment from being granted in favor of plaintiff, and it is hereby

ORDERED that defendant's motion for confirmation of the master arbitration award, attorney's fees, costs and disbursement is hereby denied in its entirety, and it is further

ORDERED that plaintiff's cross-motion for summary judgment in its favor on the issue of medical necessity is denied in its entirety.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
September 22, 2025

2025 OCT - 3
KINGS COUNTY CLERK
FILED

HON. LISA S. OTLEY J.S.C.
HON. LISA S. OTLEY