

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. EDWARD W. MC CARTY, III
Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

TRAVELERS INDEMNITY COMPANY OF
ILLINOIS a/s/o THOMAS CASSELLA

Plaintiff(s)

INDEX No.11954/04

-against-

ESTHER MANELA and ROBERT ROBINSON

MOTION DATE:1/26/06
MOTION SEQ.#001

Defendant(s)

The following papers read on this motion:

Notice of Motion/Order to Show Cause	X
Cross-Motion	
Answering Affidavit	X
Replying Affidavits	X

Motion by defendant Manela for: (a) an order pursuant to CPLR 7510 confirming an arbitration award and directing judgment be entered thereon; and (b) an order pursuant to CPLR 3025, 3211, and 3212 amending defendant's Verified Answer and dismissing plaintiff's Complaint and all causes of action, as well as any cross-claims, if any, against defendant Manela, with prejudice, is granted.

This action arises out of a three car motor vehicle accident which occurred on August 1, 2000, involving a vehicle driven by plaintiff's subrogor, Thomas Cassella, and a vehicle driven by defendant Manela and insured by Countrywide Insurance Co. ("Countrywide"), and a vehicle driven by defendant Robinson and insured by Government Employees Insurance Co. ("GEICO").

Plaintiff Travelers commenced an arbitration proceeding in which Countrywide and GEICO were the respondents. The arbitration decision dated December 22, 2004, found that Travelers proved 100% liability against GEICO, defendant Robinson's insurer, and awarded \$50,000.

Defendant Manela seeks to confirm the arbitration award. Defendant Manela further seeks to amend her answer to include an affirmative defense that plaintiff's action "may not be maintained because of arbitration of award collateral estoppel and/or res judicata". Plaintiff's counsel specifically states that plaintiff has no opposition to that portion of defendant Manela's motion which seeks to amend her answer. Defendant Robinson does not raise a specific objection to defendant Manela's attempt to amend her answer.

However, both plaintiff and defendant Robinson object to defendant Manela's request to dismiss the plaintiff's complaint and any cross claims against defendant Manela on the ground that the arbitration award has a collateral estoppel effect on this litigation.

The holding of the Court of Appeals in *Matter of American Insurance Company*, 43 NY2d 184, supports defendant Manela's position that the determination made in the arbitration proceeding between the insurance carriers has a collateral estoppel effect on the action herein. Plaintiff and defendant Robinson's argument that *Matter of American Insurance Company*, supra is inapplicable is unpersuasive. Defendant Manela's motion to amend her answer to include a collateral estoppel defense is therefore granted.

Neither plaintiff nor defendant Robinson offer any valid reason why the arbitration award at issue herein should not be confirmed. The arbitration award is therefore confirmed. Having confirmed said award, given its estoppel effect herein, defendant Manela's motion to dismiss is also granted.

Date 3-10-06

EDWARD W. McCARTY III
J.S.C.

ENTERED

MAR 14 2006

MCQUEEN COUNTY
COURT CLERK'S OFFICE