

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK ZAWIERUCHA	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SANDY DiMATTEO	:	CIVIL ACTION
and	:	
MICHAEL DiMATTEO	:	NO. 00-3198
	:	
Defendants,	:	
	:	
v.	:	
	:	
ROBERT CONVERY, JR.	:	
	:	
Third Party	:	
Defendant	:	

MEMORANDUM

BUCKWALTER, J.

December 10, 2001

Presently before the Court is Defendant-Third Party Plaintiffs' Motion for Summary Judgment on the Third Party Complaint against Third Party Defendant. For the reasons stated below, Defendant-Third Party Plaintiffs' motion is granted.

**I. PROCEDURAL BACKGROUND**

Mark Zawierucha ("Zawierucha" or "Plaintiff") filed the instant action alleging that on November 6, 1998 Michael DiMatteo ("DiMatteo" or "Defendant-Third Party Plaintiff") negligently

operated the motor vehicle he was driving,<sup>1</sup> causing a car accident in which Plaintiff suffered injuries. Plaintiff was a passenger in a car driven by Robert Convery Jr. ("Convery" or "Third Party Defendant") at the time of the accident.

One month after Plaintiff filed his complaint, DiMatteo, (the Defendant in the instant federal action), filed a complaint in the Philadelphia Court of Common Pleas against Convery, (the driver of the automobile in which Plaintiff Zawierucha was a passenger), alleging that Convery was negligent in the operation of his automobile and that Convery was the cause of the car accident occurring on November 6, 1998 (the same accident which is the subject of the instant federal action). An arbitration date of March 15, 2001 was stamped on the Court of Common Pleas complaint filed by DiMatteo.

One month after DiMatteo filed the state court action against Convery, DiMatteo filed a Third Party Complaint against Convery in the instant federal action, alleging that Third Party Defendant Convery's negligence was the cause in fact of the motor vehicle accident.

The state court action between DiMatteo and Convery went to arbitration where Convery was found to be 100% negligent in the motor vehicle accident. The Court notes that Convery did

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1. Sandy DiMatteo, the other Defendant named in this litigation, is the owner of the motor vehicle driven by Defendant-Third Party Plaintiff Michael DiMatteo.

not appear at the arbitration, however, liability was assessed against Convery despite his absence.<sup>2</sup> Convery had 30 days in which to appeal the arbitrators' determination, however, he declined to so appeal.

Because 100% liability was attributed to Convery in the state court action, DiMatteo now moves for summary judgment in the instant federal action as a Third Party Plaintiff against Convery as the Third Party Defendant asserting that Convery is collaterally estopped from litigating the issue of his negligence in causing the November 6, 1998 car accident because Convery's liability was already established in the prior state arbitration proceeding.

## **II. LEGAL STANDARD**

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 994, 8 L. Ed. 2d 176 (1962).

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2. The Court also notes that Third Party Defendant Convery has not filed a reply to Defendant-Third Party Plaintiffs' Motion for Summary Judgment in the instant federal action.

### **III. DISCUSSION**

Collateral estoppel applies if five elements are present: (1) the issue decided in the prior case is identical to the one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior case; (4) the party against whom the doctrine is asserted or his privity has had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination in the prior case was essential to the judgment therein. Schubach v. Silver, 461 Pa. 366, 377, 336 A.2d 328, 333-34 (1975); Matson v. Housing Authority of Pittsburgh, 326 Pa. Super. 109, 112-13, 473 A.2d 632, 634 (1984); Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Super. 225, 236-37, 464 A.2d 1313, 1318-19 (1983); Restatement (Second) of Judgments § 27.

#### **1. Identity of the Issues**

The issue in both the arbitration proceeding and the third party complaint is whether Convery was negligent, and to what degree, in the operation of his automobile on November 6, 1998. Therefore, the issue in the prior case is identical to the one now before the Court.

#### **2. Final Judgment on the Merits**

"Under Pennsylvania law, arbitration proceedings and their findings are considered final judgments for the purposes of

collateral estoppel." Witkowski v. Welch, 173 F.3d 192, 199 (3d Cir. 1999); Dyer v. Travelers, 392 Pa. Super. 202, 207, 572 A.2d 762, 764 (1990) ("An arbitration award from which no appeal is taken has the effect of a final judgment on the merits."); Ottaviano v. Southeastern Pennsylvania Transp. Auth., 239 Pa. Super. 363, 370, 361 A.2d 810, 814 (1976) ("An award of arbitrators from which no appeal is taken has the effect of a final judgment."). Therefore, the arbitration proceeding which imposed 100% liability on Convery constitutes a final judgment on the merits.

### **3. Identical Parties**

As noted above the arbitration proceeding involved DiMatteo as plaintiff against Convery as defendant, the identical parties to the third party complaint in the instant federal action.

### **4. Full and Fair Opportunity to Litigate**

"While the Supreme Court has repeatedly expressed the 'full and fair opportunity' requirement, it has not 'specified the source or defined the content of the requirement that the first adjudication offer a full and fair opportunity to litigate." Rider v. Pennsylvania, 850 F.2d 982, 991 (3d Cir. 1988) (quoting Kremer v. Chemical Constr. Corp., 456 U.S. 461, 481, 102 S. Ct. 1883, 1897 (1982)). "The Kremer court did, however, state that for purposes of [full faith and credit], a

'full and fair opportunity' will be presumed whenever 'state proceedings . . . satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause.'" Rider, 850 F.2d at 991 (quoting Kremer, 456 U.S. at 481, 102 S. Ct. at 1897).

Under this general standard, the Court finds that Convery was afforded a full and fair opportunity to litigate the question of his negligence in front of the arbitrators. There is no claim of procedural deficiencies in the record, nor is there any contention that Convery was deprived of his procedural due process in connection with the arbitration proceedings. Nothing before the Court suggests that Convery has been deprived either of his right to submit evidence or his right to an impartial hearing with respect to this issue. The fact that Convery apparently voluntarily chose not to participate in the hearing does not change this result. Thus, Third Party Defendant Convery was afforded a full and fair opportunity to litigate the issue of his negligence in the prior proceeding.

#### **5. Determination Essential to the Judgment**

The arbitrators determined that Convery was negligent and that DiMatteo was not. Clearly, this determination was essential to the arbitrators' attribution of 100% negligence to Convery and corresponding monetary award to DiMatteo. Therefore, the fifth element of collateral estoppel is present.

#### **IV. CONCLUSION**

As to the Third Party Complaint, there is no question that the five elements of the collateral estoppel doctrine are present. Therefore, Defendant-Third Party Plaintiff's Motion for Summary Judgment of the Third Party Complaint is granted.

An appropriate Order follows.

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SANDY DiMATTEO	:	CIVIL ACTION
and	:	
MICHAEL DiMATTEO	:	NO. 00-3198
	:	
Defendants,	:	
	:	
v.	:	
	:	
ROBERT CONVERY, JR.	:	
	:	
Third Party	:	
Defendant	:	

ORDER

AND NOW, this 10<sup>th</sup> day of December, 2001, upon consideration of Defendant-Third-Party Plaintiffs' Motion for Summary Judgment on the Third Party Complaint (Docket No. 12), Plaintiff's response thereto (Docket No. 14), Defendant-Third-Party Plaintiffs' rebuttal to Plaintiff's response (Docket No. 15), and the lack of any response from Third Party Defendant, it is hereby **ORDERED** that Defendant-Third Party Plaintiffs' Motion is **GRANTED**.

It is further **ORDERED** that the Third Party Complaint is dismissed in favor of Defendant-Third Party Plaintiffs and against Third Party Defendant.

BY THE COURT:

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RONALD L. BUCKWALTER, J.