

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D55264
C/htr

_____AD3d_____

Argued - January 16, 2018

ALAN D. SCHEINKMAN, P.J.
MARK C. DILLON
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2015-09730

DECISION & ORDER

Preferred Contractors Insurance Company Risk
Retention Group, LLC, respondent, v Nuway
Interior Corp., et al., defendants, Foundations
Interior Design Corporation, et al., appellants.

(Index No. 700949/14)

McMahon, Martine & Gallagher, LLP, Brooklyn, NY (Patrick W. Brophy of counsel), for appellants.

Rivkin Radler LLP, Uniondale, NY (Alan C. Eagle, Joanne M. Engeldrum, and Cheryl F. Korman of counsel), for respondent.

In an action for declaratory relief, the defendants Foundations Interior Design Corporation and 50 Varick, LLC, appeal from an order of the Supreme Court, Queens County (Diccia T. Pineda-Kirwan, J.), entered August 27, 2015. The order granted that branch of the plaintiff's motion which was for leave to enter a default judgment against the defendants Nuway Interior Corp., Yuriy Antonyshyn, and Natalia Mytsyk declaring that it is not obligated to defend or indemnify the defendant Nuway Interior Corp. in an underlying action entitled *Antonyshyn v Tishman Construction Corp.* pending in the Supreme Court, Queens County, under Index No. 4094/12.

ORDERED that the appeal is dismissed, with costs.

In February 2014, the plaintiff insurer commenced this action for a judgment declaring that it is not obligated to defend or indemnify the defendant Nuway Interior Corp. (hereinafter Nuway) in an underlying action entitled *Antonyshyn v Tishman Construction Corp.*

May 2, 2018

Page 1.

PREFERRED CONTRACTORS INSURANCE COMPANY RISK RETENTION GROUP, LLC
v NUWAY INTERIOR CORP.

pending in the Supreme Court, Queens County, under Index No. 4094/12. Thereafter, the plaintiff moved, inter alia, for leave to enter a default judgment against the defendants Nuway, Yuriy Antonyshyn, and Natalia Mytsyk, upon their failure to appear or answer the complaint. In an order entered August 27, 2015, the Supreme Court granted that branch of the plaintiff's motion which was for leave to enter a default judgment against those defendants declaring that it is not obligated to defend or indemnify Nuway in the underlying action. The defendants Foundations Interior Design Corporation and 50 Varick, LLC (hereinafter together the appellants), appeal from that order.

A party is aggrieved "when he or she asks for relief but that relief is denied in whole or in part" or "when someone asks for relief against him or her, which the person opposes, and the relief is granted in whole or in part" (*Mixon v TBV, Inc.*, 76 AD3d 144, 156-157 [emphasis omitted]). Here, the order appealed from granted that branch of the plaintiff's motion which sought relief against the defendants Nuway, Antonyshyn, and Mytsyk, but not against the appellants. The order appealed from specifically states that the "plaintiff bears no duty to defend, or to indemnify, Nuway in the underlying personal injury action." Accordingly, the appellants are not aggrieved by the order appealed from, and their appeal must be dismissed (*see Faicco v Mr. Lucky's Pub, Inc.*, 131 AD3d 920; *Soho Plaza Corp. v Birnbaum*, 108 AD3d 518, 519).

SCHEINKMAN, P.J., DILLON, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court