

**Yudin & Yudin, PLLC v Liberty International Under  
Writers, Inc.**

2012 NY Slip Op 30046(U)

January 11, 2012

Supreme Court, New York County

Docket Number: 104200/11

Judge: Eileen A. Rakower

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER  
*Justice*

PART 15

Index Number : 104200/2011  
YUDIN & YUDIN, PLLC.  
vs.  
LIBERTY INTERNATIONAL  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1, 2  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 3, 4  
Replying Affidavits \_\_\_\_\_ | No(s). 5, 6

Upon the foregoing papers, it is ordered that this motion is

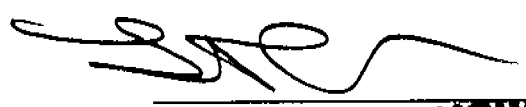
**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

### UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 1/11/12

  
**HON. EILEEN A. RAKOWER** J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
YUDIN & YUDIN, PLLC,

Index No.  
104200/11

Plaintiff,

- against -

**DECISION  
and ORDER**

LIBERTY INTERNATIONAL UNDERWRITERS, INC.,

Mot. Seq.  
001

Defendant.  
-----X

HON. EILEEN A. RAKOWER

The law firm of Yudin & Yudin, PLLC (“Yudin” or “the firm”) seeks a judgment declaring that defendant Liberty International Underwriters, Inc. (“Liberty”) has a duty to defend Yudin in the matter of *Capital One, National Association v. Yudin & Yudin, PLLC*, 650403/11 (Sup. Ct., N.Y. Co.) (“the underlying action”). In February 2010, Yudin secured a New York Lawyers Professional Liability Policy from Liberty bearing policy number LPA205421-020 (“the Policy”). The Policy covered the period of time from February 1, 2010 through February 1, 2011, and contained an “Automatic Extended Reporting Period” endorsement which effectively extended coverage to claims made within 60 days beyond February 1, 2011.

On March 3, 2011, the firm received by e-mail a copy of the summons and complaint in the underlying action. The underlying complaint states that on October 13, 2010, Yudin deposited a purported J.P. Morgan Chase Bank, N.A. check into an escrow account the firm maintained with Capital One. The check was payable to Yudin in the amount of \$489,630. On October 14, 2010, at Yudin’s request, Capital One issued a wire transfer in the amount of \$469,315.37 to an account at Korea Exchange Bank located in Korea. On October 19, 2010, Capital One received a notice informing it that the check was being returned by J.P. Morgan Chase Bank as “Altered Fictitious,” and it was later discovered that the check was fraudulent. Thereafter, Capital One charged back Yudin’s escrow account for the fraudulent item, creating an overdraft in the amount of \$479,325.17. Capital One asserts causes of action for breach of contract, breach of warranty, and negligence.

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3]

According to the affidavit of Steven G. Yudin, the underlying action arose out of the firm's representation of a client in October 2010, when it entered into a retainer agreement with the client as collection counsel. In the course of the representation, the client's alleged debtor agreed to repay the outstanding debt in two installments, and sent the firm the purported J.P. Morgan Chase check. The firm deposited the check into its escrow account with Capital One and, the following business day, had Capital One effectuate the wire transfer to the client's Korea Exchange Bank pursuant to the client's direction.

Yudin notified Bollinger Insurance Solutions, its agent, of the underlying action in writing on March 3, 2011. The firm notified Liberty in writing on March 7, 2011. Liberty disclaimed and denied coverage by letter dated March 23, 2011, asserting that the claims in the underlying action did not arise out of the rendering of professional legal services. The firm subsequently commenced this action. Yudin now moves for summary judgment. Liberty opposes the motion, and cross-moves for summary judgment in its favor.

The Policy provides, in pertinent part, as follows

We agree to pay on **your** behalf all **damages** in excess of the deductible amount and up to the limits of liability stated in the Declaration that **you** become legally obligated to pay, provided such **damages**:

2. result from **claims**
  - a. [that] are caused by a **wrongful act** which takes place before or during the **policy period**.

The term "wrongful act" is defined in the policy as "any actual or alleged act, error, omission or **personal injury** which arises out of the rendering or failure to render **professional legal services**."

The issue before the court was squarely addressed by the Appellate Division, Third Department, in *Lombardi, Walsh, Wakeman, Harrison, Amodeo & Davenport, P.C. v. American Guarantee and Liability Insurance Company*, 2011 NY Slip Op 4589 [3rd Dept. 2011]). In *Lombardi*, the plaintiff law firm ("the Lombardi firm")

\*4] was contacted by an individual purporting to be the CEO of a Taiwanese corporation seeking legal assistance in collecting debts in North America. After signing a retainer with the purported CEO, the Lombardi firm received a \$384,700 check from a purported debtor, which it placed in its escrow account with Berkshire Bank. At the instruction of the purported CEO, the Lombardi firm had the bank wire the value of the check, minus the firm's fee, to a third party in South Korea, who was allegedly a supplier of the Taiwanese corporation. After the funds were transferred, the bank notified the Lombardi firm that the check was counterfeit and that the escrow account was overdrawn. The bank subsequently commenced an action against the Lombardi firm. The Lombardi firm duly notified the insurer and requested that it defend the firm pursuant to its professional liability insurance policy, which provided coverage for any claim "based on an act or omission in ... rendering or failing to render Legal Services for others." After Berkshire Bank disclaimed coverage, the Lombardi firm commenced a declaratory judgment action.

In reversing the trial court's award of summary judgment to the defendant insurer, and finding that it was obligated to defend the Lombardi firm, the Third Department observed: "As required by the ethical rules, attorneys ordinarily maintain accounts with client funds and transfer those funds at the client's request. Thus, when dealing with Berkshire Bank, plaintiff was performing legal services as defined by the policy" (*id.* at \*3). The court further noted that the Berkshire Bank claim was "based on" the Lombardi firm's rendering of legal services, noting that the phrases "based on" and "arising out of," used synonymously in the context of insurance coverage, "require[] only that there be some causal relationship between the injury and the risk for which coverage is provided" (*id.*) (citations omitted).

Here, the undisputed facts are materially indistinguishable from *Lombardi*, which, in the absence of contrary authority from the Court of Appeals or the Appellate Division, First Department, is binding on this court (*see Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664 [2nd Dept. 1984]) ("The Appellate Division is a single State-wide court divided into departments for administrative convenience ... and, therefore, the doctrine of *stare decisis* requires trial courts ... to follow precedents set by the Appellate Division of another department until the Court of Appeals or this court pronounces a contrary rule."). Accordingly, Liberty is obligated to defend Yudin in the underlying action.

Wherefore it is hereby

\* 5]  
ORDERED, ADJUDGED and DECLARED that Yudin & Yudin, PLLC's motion for summary judgment is granted and that Liberty International Underwrites, Inc. has a duty to defend the firm in connection with the underlying action, and that Liberty has a duty to reimburse the firm for legal fees and expenses already incurred in defense of the underlying action; and it is further

ORDERED that Liberty's cross-motion for summary judgment is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: January 11, 2012

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C.

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