

**Economy Premier Assur. Co. v Robohm**

2016 NY Slip Op 30720(U)

April 15, 2016

Supreme Court, New York County

Docket Number: 150219/14

Judge: Jennifer G. Schechter

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**HON. JENNIFER G. SCHECTER**  
**J.G.C.**

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: PART 57

---

ECONOMY PREMIER ASSURANCE COMPANY,

Plaintiff,

against

MARK ROBOHM and RITA ANN KATZ,

Defendant.

---

Index No.: 150219/14

DECISION AND ORDER

SCHECTER, JENNIFER, J.:

In this declaratory judgment action, plaintiff Economy Premier Assurance Company (Economy) seeks a judgment declaring that a business exclusion bars coverage under a homeowners insurance policy for claims against defendant Mark Robohm (Robohm) in the underlying personal injury action *Rita Ann Katz v Mark Robohm* (Index No. 160582/2013) (Katz Action) now pending in Supreme Court, New York County. Robohm has not appeared in this action. Economy moves for, among other things, a stay of this action pending resolution of the Katz Action. Defendant Rita Katz (Katz) opposes the motion. The motion is granted.

#### Background

In the Katz Action, Katz alleges that she was injured in May 2013 after she was struck by Robohm who was riding a bicycle. Robohm is defended in that action by both Economy,

his homeowners insurance provider, and Sentinel, his business insurance provider (Affirmation in Support [Supp] at ¶ 16).

In January 2014, Economy commenced this action seeking a declaration that it is not required to cover Katz's claims against Robohm in the Katz Action. Economy named Katz in this action so "she would have notice of the coverage action. There are no claims asserted against her" and Katz does not have any claims against Economy (Supp at ¶ 7, 22; Supp, Ex B).

Robohm failed to appear in this action. Economy's motion for a default judgment was denied by order dated September 8, 2014, for failure to make a prima facie showing that there was no coverage under the policy and for incomplete evidence (Supp, Ex D).

On August 4, 2015, Katz served discovery demands in this action. At a preliminary conference held on August 5, 2015, the parties were directed to complete discovery by November 2015 (Supp, Ex I).

Soon thereafter, Economy made this motion seeking a stay, discontinuance against Katz or protective order as to certain discovery demands. Economy argues that Katz is only a nominal party in this case and would not be prejudiced in this action by a stay. Katz opposes the motion urging that (1) there is no basis for a stay and she has an interest in the outcome of this matter, (2) if she is a necessary party to this action,

Economy cannot discontinue against her and obtain a default judgment against Robohm and (3) there is no basis for a protective order.

#### Analysis

"Pursuant to CPLR 2201, any court in New York can stay its own proceedings 'in a proper case, upon such terms as may be just'. The stay is sought with a mere motion, but it must have good ground to support it. It is left to the court to determine what a 'proper' case is as a matter of discretion, which must be exercised with circumspection" (Siegel, NY Prac § 255 at 452 [5<sup>th</sup> ed 2011]).

Under the circumstances and in furtherance of judicial economy and avoiding potentially needless litigation, a stay is warranted. Staying this action in no way affects the parties' rights in the Katz Action. As it stands, both Economy and Sentinel are defending Robohm in that case (Supp at ¶ 16). Significantly, if Katz does not prevail in the Katz Action, this case is entirely moot. It would make no sense to proceed with disclosure that may be entirely unnecessary. Moreover, there will be no prejudice to Katz as a result of this stay. She has no claims whatsoever against Economy in this case. In fact, Economy seeks to discontinue the action against Katz

discontinuing the action as to Katz is the potential that she may be interested in this matter if she prevails in the Katz Action. In that event, the Court will allow Katz any disclosure that she seeks in accordance with CPLR article 31.

The parties are to notify the Court upon resolution of the Katz Action and a disclosure conference will be scheduled. In the interim, the Court will set 6-month control dates for the purposes of receiving updates on the status of the Katz Action.

Accordingly, it is

ORDERED that defendant's motion for a stay is granted in accordance with the terms set forth above. The parties are to appear for a status conference on October 26, 2016 at 10:00 in the morning.

This constitutes the Decision and Order of the Court.

Dated: April 15, 2016



---

HON. JENNIFER G. SCHECTER