Williams v Janvier
2016 NY Slip Op 31004(U)
May 5, 2016
Supreme Court, Kings County
Docket Number: 504086/2014
Judge: Lara J. Genovesi
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At an IAS Term, Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of May, 2016.

PRESENT:
HON. LARA J. GENOVESI,
Justice.

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OMAR WILLIAMS,

Plaintiff,

- against -

GREGUY JANVIER, THE CITY OF NEW YORK, THE DEPARTMENT OF TRANSPORTATION, WELSBACK ELECTRIC CORP. and PENN NATIONAL INSURANCE,

Defendants.

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Index No. 504086/2014

DECISION & ORDER

2016 MAY -9 AM 8:11

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	1A-1B
Opposing Affidavits (Affirmations)	2
Reply Affidavits (Affirmations)	3
Other Papers: Supplemental Affirmation in Opposition	4
Supplemental Memorandum of Penn National	5

Upon the foregoing papers, defendant Penn National Insurance (Penn National) moves for (1) an order pursuant to CPLR sections 3212 and 3211(a)(7), granting summary judgment and dismissing the complaint of plaintiff Omar Williams and all cross

claims against Penn National in their entirety; (2) an order and declaratory judgment pursuant to CPLR sections 3212 and 3001, declaring that Penn National has no duty to defend or indemnify defendant Greguy Janvier in the underlying personal injury action; (3) and for such other and further relief as the Court may deem just and proper. Plaintiff Omar Williams opposes the application.

Background

On May 27, 2013, plaintiff Omar Williams sustained personal injuries when a vehicle he was operating collided with two other vehicles at the intersection of Utica Avenue and Beverley Road, in Brooklyn, New York. The intersection is controlled by a traffic control device. The three-vehicle collision involved plaintiff, a vehicle driven by Michael Marks (Marks) and a vehicle driven by defendant Greguy Janvier (Janvier).

Penn National issued an automobile insurance policy (the policy), effective March 25, 2010, to defendant Janvier, based on his representation that he was a resident of Pennsylvania (*see* Notice of Motion, Affidavit of Kevin A. Snyder, Senior Claims Representative, paras. 3, 5). The policy was issued in and under the laws of Pennsylvania. The policy was not filed with the insurance commissioner of New York State as Penn National does not issue polices in New York State (*see* Snyder Affidavit, para. 4). The policy was subsequently renewed in 2011, 2012 and 2013. The renewal declaration issued for the period encompassing the time of the accident (March 25, 2013-September 25, 2013) shows Janvier's address in Pennsylvania (*see* Notice of Motion, Exhibit F). Additionally, the policy application shows Janvier's driver's license was issued in Pennsylvania and his vehicle was registered in Pennsylvania (*see* Notice of

Motion, Exhibit H).

On June 6, 2013, plaintiff forwarded a claim letter for the accident involving defendant Janvier to Penn National (*see* Notice of Motion, Exhibit A, Amended Verified Complaint, para. 51). On July 31, 2013, Penn National denied plaintiff's claim, notifying him that they had completed their investigation into plaintiff's claim and determined that there was no coverage for Janvier, their insured, for the accident (*see* Notice of Motion, Exhibit L).

Immediately prior to their response to plaintiff, on July 22, 2013, Penn National notified their insured, Janvier, in writing, that his policy with Penn National was rescinded and tendered a full return of the premium paid, plus interest (*see* Notice of Motion, Exhibit I and J). Penn National noted in its letter to Janvier's attorney that in Janvier's application to Penn National,

> he represented that he resided at a certain address in Reading, Pennsylvania, where he garaged or kept his vehicle, which he used only for pleasure and not work or commuting to work, and that his prior coverage had not been cancelled or non-renewed. Those representations were false, as it has been discovered that he lived and worked in New York and that his previous insurance policy was non-renewed, apparently because he did not live in the state of Pennsylvania. Indeed, as you know, he has admitted under oath that the address was false, that he lived and worked in New York, NY, and that he made those false representations in order to evade the high insurance rates in New York.
>
> If Penn National had been informed accurately of your client's address, vehicle location and usage and/or insurance history, it would not have accepted this risk and would not have issued the policy.

(Notice of Motion, Exhibit I).

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In July 2013, Penn National commenced an action in the United States District Court for the Middle District of Pennsylvania (Federal Court action), No. 1:13-cv-01981, against Janvier. On September 4, 2013, Janvier filed a signed affidavit in the Federal Court action. Janvier's affidavit stated,

> I have reviewed with my legal counsel . . .the letter of July 22, 2013 . . . informing us of Penn National's rescission. . . I agree that the rescission is valid, as I did not reside or have an address in Pennsylvania when I applied for the Policy and I knew at that time that my prior coverage was being cancelled or non-renewed because I did not reside or have an address in Pennsylvania.

(Notice of Motion, Exhibit K).

Thereafter, Penn National discontinued the Federal Court action in September 2013.

On May 7, 2014, plaintiff commenced the instant action by summons and verified complaint, naming the City of New York and the Department of Transportation (collectively the City) and Janvier as defendants. On January 23, 2015, plaintiff filed an amended summons and amended verified complaint, adding Welsback Electric Corp. and Penn National as defendants. Defendants Janvier, the City, Welsback Electric Corp. and Penn National each answered.[1]

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[1] Prior to the commencement of plaintiff's action, on May 2, 2014, Marks commenced a separate action (index number 6716/2014)(the Marks action) arising out of the same incident naming plaintiff, Janvier, the City, Welsback and Penn National as co-defendants. Defendant Janvier has not appeared in the Marks action. A so ordered stipulation was signed on August 7, 2015, joining the matters for the purpose of trial and discovery.

Discussion

Summary Judgment

The proponent for the summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact (*see Gammons v. City of New York*, 24 N.Y.3d 562, 25 N.E.3d 958 [2014], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]). "Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues' of material fact" *(Bonaventura v. Galpin,* 119 A.D.3d 625, 988 N.Y.S.2d 866 [2 Dept., 2014], citing *Andre v. Pomeroy,* 35 N.Y.2d 361, 320 N.E.2d 853 [1974]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]; *see also Zuckerman v. City of New York,* 49 N.Y.2d 557, 404 N.E.2d 718 [1980]).

"In determining a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party" (*Boulos v. Lerner-Harrington,* 124 A.D.3d 709, 2 N.Y.S.3d 526 [2 Dept., 2015], citing *Pearson v. Dix McBride, LLC,* 3

A.D.3d 895, 883 N.Y.S.3d 53 [2 Dept., 2009]). "It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact" (*Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, *supra,* citing *Sillman v. Twentieth Century-Fox Film Corp.,* 3 N.Y.2d 395, 144 N.E.2d 387 [1957] ["Issue-finding, rather than issue-determination, is the key to the procedure"]).

In support of its motion for summary judgment, Penn National contends that plaintiff cannot maintain a direct action against Penn National as Janvier's insurer. Penn National argues that plaintiff is a stranger to the insurance policy, who's right to bring a direct action is limited without first obtaining a judgment against Janvier. Further, Penn National contends that its cross claims against Janvier for a declaratory judgment do not put its coverage of Janvier under the policy at issue in this action.

In opposition to the motion, plaintiff argues that Penn National's cross claim against defendant Janvier in the instant action, allows plaintiff to maintain his direct action against Penn National. Plaintiff contends that Penn National's cross claim against Janvier, for a declaratory judgment determining the policy rescinded and void *ab initio,* has put Penn National's "coverage at issue." Therefore, plaintiff contends that as Penn National is attempting to litigate coverage within the instant action, Penn National has waived standing to object to plaintiff's direct action. [2]

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[2] Although plaintiff contends that "the Second Department has consistently waived the standing objection under New York Insurance law 3420(a)(6) where the insurer or the insured puts coverage at issue," plaintiff cites no Appellate Division, Second Department authority to support his contention (*see* Affirmation in Opposition, para. 13). Instead, plaintiff cites *Cataract Sports*

[* 7]

The Court of Appeals in *Lang v. Hanover Ins. Co.* (3 N.Y.3d 350, 820 N.E.2d 855 [2004]), held that "a judgment is a statutory condition precedent to a direct suit against the tortfeasor's insurer." In *Lang v. Hanover Ins. Co.*, "[w]hile the personal injury case was pending, plaintiff also initiated [a] declaratory judgment action against Hanover [the insurer] challenging the disclaimer of coverage" (3 N.Y.3d 350, *supra*). The question before the Court was "whether, and under what circumstances, a stranger to the policy – an injured party who has sued a tortfeasor – can bring a direct action against the tortfeasor's insurance company for a determination of coverage issues" (*Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, *supra*). The Court of Appeals held that pursuant to Insurance Law section 3420,

> an injured party [has] a right to sue the tortfeasor's insurer, but only under limited circumstances—the injured party must first obtain a judgment against the tortfeasor, serve the insurance company with a copy of the judgment and await payment for 30 days. Compliance with these requirements is a condition precedent to a direct action against the insurance company. . . Once the statutory prerequisites are met, the injured party steps into the shoes of the tortfeasor and can assert any right of the tortfeasor-insured against the insurance company.

(*Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, *supra*; *see Jimenez v. New York Cent. Mut. Fire Ins. Co.*, 71 A.D.3d 637, 897 N.Y.S.2d 143 [2 Dept., 2010]; *see also Guayara v. Hudson Ins. Co.*, 48 A.D.3d 628, 852 N.Y.S.2d 359 [2 Dept., 2008]).

& Entertainment Group, LLC v. Essex Insurance Co., 59 A.D.3d 1083, 874 N.Y.S.2d 345 [4 Dept., 2009], an Appellate Division, Fourth Department case, as well as *Kirschenbaum v. Fed. Ins. Co.*, 505 B.R. 126 [E.D.N.Y. 2014] and *Martinez v. Colasanto Const., Inc.*, 26 Misc. 3d 1206(A), 906 N.Y.S.2d 781 [Kings Ct. Sup. Ct. 2009], to support his contention (*see* Affirmation in Opposition, para. 13).

The Court of Appeals also noted that a plaintiff's reliance on CPLR section 3001 to bring a direct action against an insurer would be misplaced, stating:

> CPLR 3001 authorizes a court to declare 'the rights and other legal relations of the parties to a justiciable controversy,' providing a procedure for parties to resolve disputes over existing rights and obligations. What distinguishes declaratory judgment actions from other types of actions or proceedings is the nature of the primary relief sought—a judicial declaration rather than money damages or other coercive relief (*Solnick v. Whalen,* 49 N.Y.2d 224, 229, 425 N.Y.S.2d 68, 401 N.E.2d 190 [1980]). But nothing in the language of CPLR 3001 alters the precedent regarding an injured party's standing to sue a tortfeasor's insurer. Plaintiff has no common-law right to seek relief directly from a tortfeasor's insurer, and the statutory right created in Insurance Law § 3420 arises only after plaintiff has obtained a judgment in the underlying personal injury action.

(*Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, *supra*).

In the instant case, plaintiff, a stranger to the policy, brought a direct action against Penn National, Janvier's insurer, within the personal injury action, for a declaratory judgment, "to settle the determination of motor vehicle liability insurance coverage" (*see* Notice of Motion, Exhibit A, Verified Complaint, para. 50). Plaintiff has not obtained a judgment in this personal injury action against Janvier, which is a condition precedent to maintain a direct action against Penn National. Until plaintiff obtains a judgment against Janvier, he cannot seek relief directly from Penn National. Accordingly, Penn National met is prima facie burden of showing its entitlement to judgment as a matter of law that plaintiff may not maintain a direct action against Penn National at this time.

In opposition, plaintiff contends that Penn National has put "coverage into issue" by cross claiming against Janvier in the instant action, and therefore, plaintiff should be allowed to maintain its direct action against Penn National. Plaintiff's contention is without merit. Insurance Law section 3420(a)(6), provides in relevant part that:

> A provision that, with respect to a claim arising out of death or personal injury of any person, if the *insurer disclaims liability* or *denies coverage based upon the failure to provide timely notice*, then the injured person or other claimant may maintain an action directly against such insurer, in which the sole question is the insurer's disclaimer or denial based on the failure to provide timely notice, *unless within sixty days following such disclaimer or denial, the insured or the insurer*: (A) *initiates an action* to declare the rights of the parties under the insurance policy; and (B) *names the injured person* or other claimant *as a party to the action*. [*Empahsis added*].

Under Insurance Law section 3420(a)(6), a declaratory judgment may be maintained directly against an insurer in two ways. First, a claimant may maintain a direct action against an insurer for declaratory judgment wherein the insurer disclaims or denies coverage because the insured failed to provide timely notice of the claim. Whether the insured, Janvier, provided timely notice of the claim to the insurer, Penn National, is not at issue in the present action. Therefore, plaintiff may not maintain a direct action against Penn National on this basis.

Secondly, pursuant to Insurance Law section 3420(a)(6), a declaratory judgment may be maintained directly against an insurer if the claimant was named as a party to an action commenced by either the insurer or the insured to have the rights of the parties

under the policy declared, within sixty days of the insurers disclaimer or denial of coverage.

Although, Penn National commenced the Federal Court action within sixty days of its disclaimer to declare the rights of the parties under the insurance policy, that action did not name plaintiff or any other claimants herein as parties. Further, plaintiff relies on the Appellate Division, Fourth Department's holding in *Cataract Sports & Entertainment Group, LLC v. Essex Insurance Co.* (59 A.D.3d 1083, 874 N.Y.S.2d 345 [4 Dept., 2009]), for his contention that "the Second Department has consistently waived the standing objection under New York Insurance law 3420(a)(6) where the insurer or the insured puts coverage at issue" (*see* Affirmation in Opposition, para. 13). *Cataract Sports & Entertainment Group, LLC,* was an declaratory judgment action commenced by an insured against his insurer to have the rights of the parties under the insurance policy declared.

In *Cataract Sports & Entertainment Group, LLC,* the court held that the claimant was allowed to contest the issue of coverage because the insured had initiated the action against its insurer for a declaration of the rights of the parties under the insurance policy and named the claimant as a defendant in the action.

> We note at the outset that the Strangios [claimant] ordinarily would lack standing to seek such relief against Essex [insurer] based on their failure to satisfy the requirements of Insurance Law § 3420 by obtaining a judgment against Essex, the tortfeasors' insurer, in the underlying action (*see 3405 Putnam Realty Corp. v. Insurance Corp. of N.Y.*, 36 A.D.3d 565, 828 N.Y.S.2d 394, *lv. denied* 8 N.Y.3d 813, 836 N.Y.S.2d 552, 868 N.E.2d 235). Here, however, plaintiffs [insured] named them [claimant] as party defendants, thereby

> allowing them to contest the issue of coverage in this action (*see id.*).

(*Cataract Sports & Entm't Grp., LLC v. Essex Ins. Co.*, 59 A.D.3d 1083, *supra*). Essentially, the court mirrored the statutory language of Insurance Law section 3420(a)(6).

In the instant action, plaintiff, a claimant, commenced this action naming the insured, Janvier, and insurer, Penn National, as defendants. As proscribed under Insurance Law section 3420(a)(6), neither the insured or the insurer commenced the action herein, therefore, plaintiff may not maintain a direct action against Penn National pursuant to Insurance Law section 3420(a)(6). Plaintiff failed to raise a material issue of fact in opposition.

Declaratory Judgment

In support of its motion for a declaratory judgment, Penn National contends that Janvier's policy was rescinded and is void *ab initio*. Penn National maintains that it would not have issued the policy without Janvier's misrepresentations regarding his residence; in particular, Penn National is not authorized to issue automobile polices in the state of New York. Penn National argues that the question of whether the policy was properly rescinded and voided *ab initio* is a determination under the law of the state of Pennsylvania, where the contract was applied for and underwritten. Further, Penn National argues that Vehicle and Traffic Law (VTL) section 313 does not apply to its policy with Janvier. VTL section 313 applies exclusively to automobile policies filed with the commissioner of the state of New York. Penn National avers that if VTL section

313 applies, New York law allows a retroactive rescission of an automobile policy when there has been a material misrepresentation as in the present case.

In opposition, plaintiff contends that Penn National's concession that it is authorized to do business in New York State makes it subject to the laws of New York State, including VTL 313. Plaintiff argues that VTL section 313 precludes Penn National from cancelling an insurance policy *ab initio* strictly based on fraud. Further, plaintiff contends that Penn National may not deny coverage to injured parties against whom there are no allegations of fraud. Lastly, plaintiff contends that Pennsylvania law permits rescission within the first 60 days of a policy and thereafter only prospective cancelation of a policy is permitted.

Pursuant to CPLR section 3001,

> [t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. . .

At issue is whether Penn National's rescission of the policy *ab initio* was proper for this Court to render a declaratory judgment stating that Penn National has no duty to defend or indemnify Janvier in the underlying personal injury action. As an initial matter, this Court must determine whether New York or Pennsylvania law is applicable. The Appellate Division, Second Department, has held that:

> [i]t is undisputed that this conflict of law question, although arising in the context of a motor vehicle accident, must be resolved by the conflict of law rules relevant to contracts, not torts. Generally, 'the courts apply the more flexible center of gravity or grouping of contacts inquiry, which permits consideration of the spectrum of significant contacts in order

> to determine which State has the most significant contacts to the particular contract dispute. In general, significant contacts in a case involving contracts, in addition to the place of contracting, are the place of negotiation and performance, the location of the subject matter of the contract, and the domicile or place of business of the contracting parties. As to insurance contracts specifically, significance has been attached to the local law of the state which the parties understood was to be the principal location of the insured risk ... unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 [of the Restatement] to the transaction and the parties. In the case of a noncommercial vehicle, which is by its nature mobile, the principal location of the insured risk is the place where the vehicle is to be principally garaged'

(*Unitrin Direct/Warner Ins. Co. v. Brand*, 120 A.D.3d 698, 993 N.Y.S.2d 37 [2 Dept., 2014], citing *Matter of Eagle Ins. Co. v. Singletary,* 279 A.D.2d 56, 717 N.Y.S.2d 351 [2 Dept., 2000]).

In the instant matter, considering the spectrum of significant contacts, Pennsylvania law is controlling. Penn National issued the automobile insurance policy to Janvier in Pennsylvania. At that time, Janvier indicated that he resided and garaged the vehicle in Pennsylvania (*see Optimal Well-Being Chiropractic, P.C. v. Infinity Ins. Co.*, 46 Misc. 3d 27, 998 N.Y.S.2d 759 [Sup. Ct., App. Term 2 Dept., 2014]). In addition to Janvier's concession that he misrepresented his residency and where the vehicle would be garaged, the parties understood the principal location of the insured's risk was to be in Pennsylvania. The only connection between the policy and New York was that the accident occurred in New York. Therefore, "Pennsylvania law should be applied, since that state had the most significant contacts with the parties and the contract" (*Delta Diagnostic Radiology, P.C. v. Infinity Grp.,* 49 Misc. 3d 42, 18 N.Y.S.3d 816 [Sup. Ct., App. Term 2 Dept., 2015]).

The Pennsylvania Supreme Court in *Erie Ins. Exch. v. Lake* (543 Pa. 363, 671 A.2d 681 [1996]), held that,

> an insurer may rescind a policy of insurance as to the actual perpetrator of the fraud, where the fraud could not reasonably have been discovered within the 60 day period immediately following issuance of the policy; limited to those instances where the undiscovered fraud was of such a nature that it is clear that an insurer would never have accepted the risk inherent in issuing the policy

(*id.*).

Erie Ins. Exch. v. Lake, similar to the instant action, was a declaratory judgment action by an automobile insurer seeking entitlement to rescind the automobile policy *ab initio* due to the insured's fraud in procuring the policy (*id.*). In that case, the court concluded that the insurer was entitled to rescind the policy *ab initio* due to the insured's fraud (*id.*). However, the court held that as to third parties,

> [a]lthough on the surface it appears harsh to force the insurance company to abide by a contract procured by fraud, it would be beyond harsh to preclude the third party appellees, who are innocent of trickery, and injured through no fault of their own, from receiving protection under the policy. Weighing all the factors, we are compelled to conclude that it is clearly the intent of the remedial legislation known as Act 78 to preclude recis[s]ion of an insurance policy, as to third parties, beyond the 60 day grace period within the Act itself

(*id.*).

In the instant case, the policy was initially issued on March 25, 2010. On March 25, 2013, the policy was renewed. In his initial application and subsequent renewal applications, defendant Janvier indicated that he resided in Pennsylvania and the address

on his driver's license buttressed his statement. Further, he stated that the vehicle would be garaged in Pennsylvania. There is no indication that Penn National had any basis to discredit defendant Janvier's representation. Likewise, there is no basis to indicate that Penn National could have reasonably discovered defendant Janvier's fraudulent inducement within 60 days of March 25, 2013, the last issuance of the policy.

In accordance with Pennsylvania law, Penn National may rescind the policy issued to Janvier and void it *ab initio*. Penn National issues automobile insurance policies exclusively in Pennsylvania. Janvier fraudulently procured the policy by misrepresenting a material fact; that he resided and would garage the vehicle in Pennsylvania. Despite his representations, Janvier resided and garaged the vehicle in New York, which he admitted in the affidavit submitted in the Federal Court action. Penn National reiterated that since it did not issue New York State auto policies it would not have issued the policy if it had known that Janvier resided and garaged the vehicle in New York. Therefore, Pennsylvania law allows Penn National to rescind its auto insurance policy with Janvier and void it *ab initio*. Janvier, the party who committed the fraud, cannot benefit from his wrongdoing (*id.*).

Nevertheless, the Pennsylvania Supreme Court's holding in *Erie Ins. Exch. v. Lake*, limits rescission of the policy as to innocent third parties (*see Compas Med., P.C. v. Infinity Grp.,* 46 Misc. 3d 146(A), 13 N.Y.S.3d 849 [Sup. Ct., App. Term 2 Dept., 2015]). It is undisputed that Penn National did not cancel or rescind the policy before the date of the accident (the accident occurred on May 27, 2013, and the policy was rescinded on July 22, 2013). Certainly, there is no evidence that plaintiff, a third party, was involved

in Janvier's fraud upon Penn National. Therefore, if plaintiff was injured through no fault of his own, Penn National is precluded from denying coverage to plaintiff based on the fraudulently obtained policy. Accordingly, although Penn National voided the insurance contract *ab initio*, as articulated in *Erie Ins. Exch. v. Lake*, plaintiff, a third party innocent of trickery, is entitled to the benefits of the policy upon a determination of plaintiff's liability in the underlying personal injury action.[3]

Conclusion

Penn National's motion for summary judgment and to dismiss the complaint and all cross claims on the ground that plaintiff may not maintain a direct action against Penn National without first obtaining a judgment against Janvier is granted. Penn National's motion for a declaratory judgment and summary judgment is granted to the extent that their insured, Janvier, may not benefit from the auto insurance contract, which was

[3] This Court notes that an analysis under New York Law would have similarly precluded Penn National from rescinding the policy as to innocent third parties. "Vehicle and Traffic Law § 313(1)(a) supplants an [insurer's] common-law right to cancel a contract of insurance retroactively on the grounds of fraud or misrepresentation, and mandates that the cancellation of a contract pursuant to its provisions may only be effected prospectively. This provision places the burden on the insurer to discover any fraud before issuing the policy, or as soon as possible thereafter, and protects innocent third parties who may be injured due to the insured's negligence" (*Gov't Employees Ins. Co. v. Allen*, 95 A.D.3d 1322, 944 N.Y.S.2d 761 [2 Dept., 2012], quoting *Matter of Global Liberty Ins. Co. of N.Y. v. Pelaez,* 84 A.D.3d 803, 922 N.Y.S.2d 510 [2 Dept., 2011]).

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obtained by his fraudulent inducement. However, Penn National's motion for declaratory judgment is denied with respect to plaintiff because plaintiff is entitled to the benefits of the policy.

The foregoing constitutes the decision and order of this Court.

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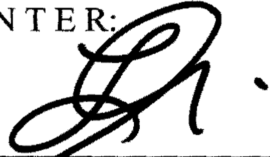

Hon. Lara J. Genovesi
J.S.C.

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