Samsung Fire & Mar. Ins. Co. Ltd v RLI Ins. Co.
2018 NY Slip Op 30018(U)
January 3, 2018
Supreme Court, New York County
Docket Number: 655169/2016
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 43
---X
SAMSUNG FIRE & MARINE INSURANCE CO. LTD, SURREY HOTEL ASSOCIATES, LLC, SURREY HOTEL MANAGEMENT CORP., and HAMPSHIRE HOTELS MANAGEMENT LLC

Plaintiffs,

-against-

Index No. 655169/2016

RLI INSURANCE COMPANY d/b/a MT. HAWLEY INSURANCE COMPANY, U.S. SPECIALTY INSURANCE COMPANY, STATE NATIONAL INSURANCE COMPANY, INC., PREFERRED CONTRACTORS INSURANCE COMPANY, and AMERICAN EMPIRE SURPLUS LINES,

DECISION/ORDER

Defendants,

---X
ROBERT R. REED, J.:

Motions sequence number 001 and 002 are consolidated for disposition.

In this declaratory judgment action, plaintiffs seek additional insured coverage from their subcontractors' insurers in connection with an alleged wrongful death action (the underlying action) resulting from an accident involving deceased nonparty Gurmeet Singh (Singh).

In motion sequence number 001, defendant American Empire Surplus Lines Insurance Company i/s/h/a American Empire Surplus Lines (American Empire, A. E., or movant) moves for an order: (1) dismissing this declaratory judgment action pursuant to CPLR 3211 (a) (1) and CPLR 3211 (a) (7); (2) declaring that American Empire is not obligated to insure, defend, or indemnify plaintiffs Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC (the Surrey entities) in the underlying action; and (3) declaring that American Empire is not obligated to reimburse plaintiff Samsung Fire & Marine

Insurance Company, Ltd. (Samsung) for the costs and expenses incurred in connection with its defense of the Surrey entities in the underlying action.

In motion sequence number 002, defendant U.S. Specialty Insurance Company (U.S. Specialty, or U.S.) moves to join in the arguments set forth in American Empire's motion to dismiss and accompanying papers, and for a declaratory judgment.

For the reasons stated, American Empire's motion to dismiss and for a declaratory judgment is granted, and U.S. Specialty's motion to dismiss and for a declaratory judgment is also granted.

I. Background and Procedural History

The Underlying Action

On April 2, 2014 (date of loss), Singh, who was performing construction work at the Dream Hotel located at 210 West 55th Street, New York, New York 10019 (the premises, or the insured location), allegedly fell to his death from scaffolding onto the sidewalk-shed deck below, provided and set up by Everest Scaffolding, Inc. (Everest), a defendant in the underlying action. The complaint in the underlying action alleges that the fall came as a result of the Surrey entities' alleged negligence and/or violations of Labor Law §§ 200, 240 (1) and 241 (6).

On February 9, 2015, Rajwinder Kaur (Kaur) was appointed administratrix of the estate of Singh by order of the Queens County Surrogate's Court. Following the appointment, Kaur filed the underlying wrongful death personal injury action on February 19, 2015 (*Rajwinder Kaur as Administratrix of the Estate of Gurmeet Singh v Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC*, Index No. 701707/2015 [Sup Ct, Queens County]).

A third-party summons and complaint was filed on July 2, 2015 by defendants/third-party plaintiffs Surrey entities, for common law indemnification, contractual indemnification, contribution, and breach of contract against Everest Scaffolding, Inc. (Everest), Singh's alleged employer, Alpha General Contractors of NY, Inc. (Alpha), and Pak National Gen Corporation (Pak).

The Instant Declaratory Judgment Action

Plaintiffs commenced this declaratory judgment action on September 28, 2016 seeking a declaration that State National Insurance Company and RLI Insurance Company d/b/a Mt. Hawley Insurance Company (Alpha's insurers); Preferred Contractors Insurance Company (Pak's insurer); and U.S. Specialty and American Empire (Everest's insurers) are obligated to insure, defend and indemnify the Surrey entities and reimburse Samsung for all expenses incurred in connection with its defense of these entities in the underlying action.

The Relevant Policies

American Empire issued an excess liability insurance policy (the A.E. policy) to nonparty Everest, bearing policy number 13CX0180506, for the policy period of December 30, 2013 to January 15, 2015, limited to $3,000,000 per occurrence and $3,000,000 in the aggregate (Complaint, exhibit E). Everest's primary commercial general liability insurance policy was issued by U.S. Specialty, under policy number U13PC30027-00 (the U.S. policy), for the same period, with limits of $2,000,000 per occurrence and $4,000,000 in the aggregate (*id.*, exhibit D).

Plaintiffs allege that the A.E. policy contains a provision requiring American Empire to provide additional coverage to the Surrey entities as additional insured(s) on a primary basis, based on the Everest subcontract and the U.S. policy (*id.*, ¶ 41).

The Surrey entities assert that they tendered to all of the defendants on or about December 18, 2015 seeking additional insured coverage for the underlying lawsuit (*id.*, exhibit F). According to the complaint, none of the defendants agreed to provide additional insured coverage to the Surrey entities (*id.*, ¶ 49), and U.S. Specialty improperly disclaimed coverage to the Surrey entities (*id.*, ¶ 50). Furthermore, American Empire has not responded to the tender (*id.*, ¶ 51).

II. Motion Sequence Number 001

A. Contentions

American Empire contends that its policy includes a schedule of underlying insurance, which lists the U.S. policy and provides, in pertinent part, that coverage under the A.E. policy follows the form of the underlying policy issued by U.S. Specialty, and "is subject to the applicable insuring agreements, exclusions, conditions and terms of the [U.S. Policy], whether such insurance is collectible or not" (*id.*, exhibit E at 1).

Movant argues that plaintiffs are not entitled to insurance coverage in the underlying action because Everest is not in contract privity with any of the Surrey entities, as required by the plain language of the policy. Movant alleges that Everest entered into a contract for the installation of a sidewalk bridge and pipe scaffolding at the premises with non-party Hampshire Hotels & Resorts (HHR), and not with any of the Surrey entities. Movant alleges that the contract provides that Everest agrees to name HHR as additionally insured, and it does not name, or refer, to any of the Surrey entities.

Movant further highlights that the U.S. policy contains an endorsement entitled "Additional Insured - Owners, Lessees Or Contractors - Scheduled Person or Organization," which modifies the insurance, provided under the commercial general liability coverage part,

and limits coverage with respect to liability for bodily injury to Everest's acts or omissions for the additional insured(s) in its ongoing operations at the site.

In sum, American Empire argues that plaintiffs are not entitled to insurance coverage in the underlying action under the policy, because the plain language of the additional insured endorsement in the U.S. policy limits additional insurance coverage to those parties with whom Everest has entered into a direct contract that requires Everest to name that party as an additional insured, and that no such agreement exists. Furthermore, assuming arguendo that there is privity of contract between the parties, plaintiffs still do not qualify for additional insured coverage as it is only triggered where the underlying bodily injury is caused, in whole or in part, by Everest's acts or omissions in its ongoing operations for the additional insureds. Here, while Everest installed the scaffolding that was the situs of the accident, it did not return to the site to inspect and/or maintain the equipment, and, thus, there is no causal connection between Everest's acts or omissions and Singh's injuries and resulting death.

In opposition, plaintiffs argue that American Empire's motion must fail because the documents it relies upon are not duly authenticated and do not utterly refute the declaratory judgment lawsuit; secondly, that there is privity of contract between Everest and Hampshire Hotels Management, LLC as assignee of the Everest subcontract, as evidenced by the management agreement for the insured location between Surrey Hotel Associates, LLC and HHR, the assignment and assumption of management agreement between HHR and Hampshire Hotels Management LLC, and in accordance with an affidavit by Riyaz Akhtar, who is the former President of HHR and current President of Hampshire Hotels Management LLC; and, finally, that American Empire's coverage obligations to plaintiffs are triggered as a result of the allegations of the third-party lawsuit that Everest caused the alleged loss. The mere fact that the

decedent was on Everest's equipment is a connection to the alleged accident which is sufficient to trigger American Empire's coverage obligations.

In reply, American Empire contends that plaintiffs fail to create an issue of fact that the documentary evidence is ambiguous and unauthenticated, as plaintiffs relied on it to support this declaratory judgment action (*see* Complaint exhibits). Furthermore, any redactions pertain to the policy premiums. To counter plaintiffs' arguments, movant annexes to its reply affirmation certified copies of Everest's insurance policies with U.S. Specialty and American Empire thereby rendering plaintiffs' argument moot.

Secondly, American Empire contends that there was no valid assignment and that the purported assignment agreement had nothing to do with the project where Singh was injured. Rather, the agreement submitted in opposition is between HHR, as operator, and Beverley Hotel Associates, LLC, as owner "for the premises located at 207-215 West 94th Street a/k/a 2520-2526 Broadway, New York, New York," whereas the loss occurred at 210 West 55th street (Sklan Reply affirmation, ¶ 18). Furthermore, American Empire maintains that there is no direct contractual privity between Everest and plaintiffs on the basis that there is an anti-assignment clause in the Everest - Hampshire Hotels & Resorts agreement. Therefore, the purported assignment agreement, to which Everest was not a party, has no legal effect vis-à-vis it. In addition, there is no written contract or agreement between Everest and any of the Surrey entities seeking coverage as additional insured, as required by the plain language of the U.S. policy.

Lastly, movant argues that Everest's scaffolding was merely the situs of the accident, that Everest did not return to the insured location after the installation of the sidewalk bridge and pipe scaffolding, and that maintenance was the responsibility of HHR. Movant reiterates that

there is no causal connection between Singh's accident and Everest's acts or omissions in its ongoing operations that would entitle plaintiffs additional insured coverage.

B. Discussion

1. Legal Standard

CPLR 3001 permits the Supreme Court to "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." An insurer may be relieved from its duty to defend and indemnify in a declaratory judgment action if it establishes as a matter of law that there is "no possible factual or legal basis on which it might eventually be obligated to indemnify its insured under any policy provision" (*Total Concept Carpentry, Inc. v Tower Ins. Co. of N. Y.*, 95 AD3d 411, 411 [1st Dept 2012] [internal quotation marks omitted], quoting *Allstate Ins. Co. v Zuk*, 78 NY2d 41, 45 [1991]).

It is well established that "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994], citing CPLR 3026). On a pre-answer motion to dismiss a complaint for failure to state a cause of action, pursuant to CPLR 3211 (a) (7), "the court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory" (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 121 [1st Dept 2002]).

Where dismissal of an action is sought, pursuant to CPLR 3211 (a) (1), on the ground that it is barred by documentary evidence, such relief may be warranted only where the documentary evidence "'utterly refutes plaintiff's factual allegations'" and "'conclusively establishes a defense to the asserted claims as a matter of law'" (*Amsterdam Hospitality Group,*

LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431, 433 [1st Dept 2014] [internal citations omitted]). The court is "not required to accept at face value every conclusory, patently unsupportable assertion of fact found in the complaint" and can "consider documentary evidence proved or conceded to be authentic" (*West 64th Street, LLC v Axis U.S. Ins.*, 63 AD3d 471, 471 [1st Dept 2009], quoting *Four Seasons Hotels v Vinnik*, 127 AD2d 310, 318 [1st Dept 1987] [internal quotation marks omitted).

Finally, New York courts will enforce the "plain and ordinary meaning" of unambiguous policy terms (*2619 Realty v Fidelity and Guar. Ins. Co.*, 303 AD2d 299, 300 [1st Dept 2003]). The issue of "whether a provision in an insurance policy is ambiguous is a question of law" for the court to decide (*Atlantic Mut. Ins. Co. v Terk Tech. Corp.*, 309 AD2d 22, 28 [1st Dept 2003], citing *Breed v Insurance Co. of N. Am.*, 46 NY2d 351, 355 [1978] and *Thomson v Power Auth. of State of N. Y.*, 217 AD2d 495, 496 [1st Dept 1995]), and "the policy is the controlling document" (*Evanston Ins. Co. v Po Wing Hong Food Mkt., Inc.*, 21 AD3d 333, 334 [1st Dept 2005]).

2. Analysis

a. The Relevant Contractual Provisions

Under the Terms & Conditions section of the agreement dated May 3, 2013 between Everest and HHR, it is provided, in relevant part, that:

> "1. Terms/Definitions: . . . Upon signing this Agreement, it shall constitute a contract and is non-transferable. This Agreement is not subject to change without the expressed written consent of Everest.
>
> * * *
>
> "11. Everest agrees to name the Customer, upon signing this document, as additionally insured as evidenced by a Certificate of Insurance that will be provided by Everest upon request. Any coverage to additional insureds shall apply only to occurrences that arise out of Everest's sole and exclusive negligence

> and which occur during the time period when Everest or its subcontractor are physically at the job site performing the "work" of assembling the equipment and/or disassembling the equipment.
>
> * * *
>
> "16. This Agreement is the entire agreement between the parties. Terms printed on any other document not attached hereto at the time this Contract is signed by Everest are specifically excluded from being part of this contract. This exclusion applies to any documents purportedly incorporated by reference but which are not attached to the contract when it is signed by Everest. Any modifications to this Agreement are required to be in writing and signed by both parties. Faxed signatures have the same force and effect as the originals. To the extent that Everest signs any other agreement or contract, the terms of the Everest Agreement shall be primary to the extent that the clauses are inconsistent."

(Complaint, exhibit C at 2 and 3).

The Assignment and Assumption of Management Agreement dated May 31, 2013 and signed by Vice President Rabinder Pal Singh on behalf of Assignor Hampshire Hotels & Resorts, LLC/Hampshire Management Corp. (USA), Managing Member, and Sant S. Chatwal, Manager, on behalf of Assignee Hampshire Hotels Management LLC, contains the following language:

> "For good and valuable consideration, receipt of which is hereby acknowledged, HAMPSHIRE HOTELS & RESORTS, LLC, a New York limited liability company ("Assignor"), hereby assigns to HAMPSHIRE HOTELS MANAGEMENT, LLC, a New York limited liability company ("Assignee"), all of the right title, interest, benefits and privileges of Assignor in and to that certain Management Agreement dated as of January 1, 2006 between Beverley Hotel Associates, LLC, as Owner, and Assignor, as Operator, for the premises located at 207-215 West 94th Street a/k/a 2520-2526 Broadway, New York, New York (the "Management Agreement").
>
> "Assignee hereby assumes, accepts and agrees to perform all of Assignor's obligations under the Management Agreement attributable to the period from and after the date hereof."

(Eric B. Stern affirmation, exhibit A).

b. The Relevant Policy Provisions

The A. E. excess policy includes a schedule of underlying insurance, which lists the U.S. policy and provides, in pertinent part:

> "**1. INSURING AGREEMENT**
>
> **A. Coverage**
>
> We will pay those sums that the insured becomes legally obligated to pay as damages in excess of the total applicable limits of the Underlying Insurance set forth in the Declarations of this policy, whether such limits are collectible or not. This insurance is subject to the applicable insuring agreements, exclusions, conditions and terms of the Underlying Insurance, whether such insurance is collectible or not."

(Sklan Reply affirmation, exhibit 2 at 1).

The U.S. policy contains the following relevant provision:

> "**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**
>
> **Name Of Additional Insured Person(s) Or Organization(s)**:
>
> Any person or organization for your operations during the policy period when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.
>
> **A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
>
> 1. Your acts or omissions; or
>
> 2. The acts or omissions of those acting on your behalf;
>
> in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above."

(Sklan Reply Affirmation, exhibit 1).

c. Application to Facts

It is well established that the party claiming insurance coverage has the burden of showing entitlement (*City of New York v Wausau Underwriters Ins. Co.*, 145 AD3d 614, 617 [1st Dept 2016], citing *Kidalso Gas Corp. v Lancer Ins. Co.*, 21 AD3d 779, 780-781 [1st Dept 2005]; *see also Moleon v Kreisler Borg Florman Gen. Constr. Co.*, 304 AD2d 337, 339 [1st Dept 2003]). A party who is not named as an insured or additional insured on the face of the policy is not entitled to coverage (*National Abatement Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 33 AD3d 570, 571 [1st Dept 2006]).

Contrary to plaintiffs' assertions, "the extent of coverage (including a given policy's priority vis-à-vis other policies) is controlled by the insurance policy terms, not by the terms of the underlying trade contract" (*Bovis Lend Lease LMB, Inc. v Great Am. Ins. Co.*, 53 AD3d 140, 145 [1st Dept 2008]). Here, the A.E. policy follows the form of the underlying primary U.S. policy, and its terms control in the event they conflict with the latter, to the extent that coverage is invoked, and as it may include additional exclusions or coverage (*200 Fifth Ave. Owner, LLC v New Hampshire Ins. Co.*, 2012 NY Slip Op 31526 [U] [Sup Ct, New York 2012]).

Plaintiffs' contentions of conferral of additional insured status through an assignment are of no moment. The purported assignment agreement submitted in opposition, as flagged by movant, is not relevant to the subject case and concerns a different insured location.

The additional insured endorsement clause in the U.S. policy, which American Empire incorporates by reference in its excess policy, requires a written contract or agreement between Everest, its named insured, and the entity claiming additional insured status.

The court notes that the language in the aforementioned clause is exactly the same as the one in the policy under consideration in *AB Green Gansevoort, LLC v Peter Scalamandre & Sons., Inc.*, 102 AD3d 425, 426 [1st Dept 2013], citing *Linarello v City Univ. of N. Y.*, 6 AD3d 192 [1st Dept 2004] [the court held that the policy language in *Linarello*, a controlling precedent, was exactly the same as the policy at issue]). In *AB Green*, the court stated that, as in *Linarello*, the policy "specifically provides that there must be a written agreement between the insured and the organization seeking coverage to add that organization as an additional insured. No such agreement exists here. Absent such an agreement, the plain terms of the policy have not been met and [plaintiff] cannot seek coverage from [defendant-movant] as an additional insured" (*id.*).

More recently, in *Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire & Mar. Ins. Co.*, the First Department, citing *AB Green* and *Linarello*, reiterated its interpretation of additional insured provisions worded similarly to the one at issue (143 AD3d 146, 151-152 [1st Dept 2016]). The *Gilbane* court explained that a direct contractual promise, or relationship between the named insured and the putative additional insured was required to confer additional insured status in those cases.

Here, in light of the absence of a written contract or agreement between the Surrey entities and Everest as required by the unambiguous policy terms, plaintiffs cannot establish entitlement to additional insured coverage.

Accordingly, American Empire's motion to dismiss; for a declaratory judgment that it is not obliged to defend, provide coverage, or indemnify the Surrey entities; and that it is not obliged to reimburse Samsung in the underlying action, is granted.

II. Motion Sequence Number 002

A. Contentions

Defendant U.S. Specialty moves the court to join in the arguments set forth by American Empire in motion sequence number 001, and seeks dismissal of plaintiffs' complaint, and a declaratory judgment that it is not obliged to defend, provide coverage, or indemnify the Surrey entities and that it is not obliged to reimburse Samsung in the underlying action.

U.S. Specialty argues that the U.S. policy issued to Everest, under which plaintiffs seek coverage, requires a written contract between Everest and the specific entity seeking additional insurance coverage. U.S. Specialty highlights that, as stated in American Empire's motion papers, none of the plaintiffs entered into a written agreement with Everest. Rather, the entity that contracted with Everest was non-party Hampshire Hotels & Resorts. In addition, U.S. Specialty contends that even if plaintiffs satisfied the foregoing requirement, they have failed to establish that Singh's injuries were caused by "[Everest's] acts or omissions . . . in the performance of [Everest's] ongoing operations . . ." (Aidan M. McCormack, Memorandum of Law at 2).

In opposition, plaintiffs argue that the motion to join should be denied because: (1) the motion is defective as (a) no legal authority is presented; (b) the motion seeks to join a pre-answer motion to dismiss after U.S. Specialty submitted its answer and after its time to amend as of right expired; (c) U.S. Specialty failed to attach the pleadings to its motion to join; (d) U.S. Specialty waived the defense of documentary evidence by failing to raise it in its answer; (2) the documents relied upon by U.S. Specialty in support of its motion, namely, American Empire's

documents, are not unambiguous, or of undisputed authenticity, nor do they utterly refute this lawsuit; (3) as assignee of the Everest subcontract, plaintiff Hampshire Hotels Management, LLC, is in privity of contract with Everest to trigger additional insured coverage; and (4) the allegations of the third-party lawsuit trigger U.S. Specialty's coverage obligations because it is alleged that Everest caused the subject loss.

In reply, U.S. Specialty argues that plaintiffs have failed to satisfy their threshold burden of proving that any of them has a written contract with Everest requiring Everest to add them to the U.S. policy; that plaintiffs cannot rely on their own allegations to meet their burden of showing that the injury was caused by Everest's acts or omissions and Everest's sole and exclusive negligence; that plaintiffs' argument, that U.S. Specialty waived the documentary evidence defense and failed to provide documentary evidence in support of its motion, is without merit; and that the purported defects in the U.S. Specialty's papers are minor, curable and do not warrant the denial of its motion. U.S. Specialty further argues that it cured minor procedural defects by attaching the pleadings to its reply.

B. Discussion

While a CPLR 3211 (a) motion is usually thought of as a pre-answer dismissal device, and U.S. Specialty latches on to American Empire's motion to dismiss pursuant to CPLR 3211 (a) (1) and 3211 (a) (7) after it served its answer, a motion predicated on paragraph (7) of subdivision (a) of CPLR 3211 "may be made at any time – the objections of . . . failure to state a cause of action . . . – and may be made notwithstanding the service of an answer and even though the objection was not even included in the answer as a defense" (McKinney's Cons Laws of NY, Supplementary Practice Commentaries, CPLR C3211:49 [2017]) [Note: online treatise].

Indeed, an objection under CPLR 3211 (a) (7) is so fundamental that it can be raised at any time during the action, whether as a defense in the action or not (*see* Siegel, NY Prac § 265 at 463 [5th ed 2011]; *see also San-Dar Associates v Fried*, 151 AD3d 545, 545-546 [1st Dept 2017] and *Riland v Todman & Co.*, 56 AD2d 350, 352-353 [1st Dept 1977]).

Here, there is no prejudice to plaintiffs, as this motion deals with the same policy and the same issue of law as discussed in motion sequence number 001, namely, whether plaintiffs qualify as additional insured. As set forth in the previous decision, the question of entitlement to additional insured coverage hinges on whether plaintiffs had a written contract with Everest pursuant to the U.S. policy language.

Given this court's determination in motion sequence number 001 that there was no written contract between the aforementioned parties, thus no entitlement to coverage, for the same reasons, U.S. Specialty prevails on its motion seeking dismissal of the instant declaratory judgment lawsuit, and for a declaratory judgment in its favor.

III. Conclusion

Accordingly, it is

ORDERED that the motion of defendant American Empire Surplus Lines which seeks to dismiss plaintiffs' declaratory judgment action and further seeks a declaration that it is not obliged to provide a defense to, and provide coverage or indemnification for, plaintiffs Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC in the action of *Rajwinder Kaur as Administratrix of the Estate of Gurmeet Singh v Surrey*

Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC, Index No. 701707/2015 [Sup Ct, Queens County], is granted; and it is further

ADJUDGED and DECLARED that defendant American Empire Surplus Lines is not obliged to provide a defense to, and provide coverage for, or indemnify plaintiffs Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC in the said action pending in Queens County; and it further

ADJUDGED and DECLARED that defendant American Empire Surplus Lines is not obliged to reimburse plaintiff Samsung Fire & Marine Insurance Company, Ltd. for the costs and expenses incurred in connection with its defense of the Surrey entities in the underlying action; and it further

ADJUDGED that defendant American Empire Surplus Lines does recover from the plaintiffs, Surrey Hotel Associates, LLC, Surrey Hotel Management Corp., Hampshire Hotels Management, LLC, and Samsung Fire & Marine Insurance Company, Ltd., costs and disbursements as taxed by the Clerk, and defendant American Empire Surplus Lines have execution therefor; and it is further

ORDERED that the motion of defendant U.S. Specialty Insurance Company which seeks to dismiss plaintiffs' declaratory judgment action and further seeks a declaration that it is not obliged to provide a defense to, and provide coverage or indemnification for, plaintiffs Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC in the action of *Rajwinder Kaur as Administratrix of the Estate of Gurmeet Singh v Surrey*

Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC, Index No. 701707/2015 [Sup Ct, Queens County], is granted; and it is further

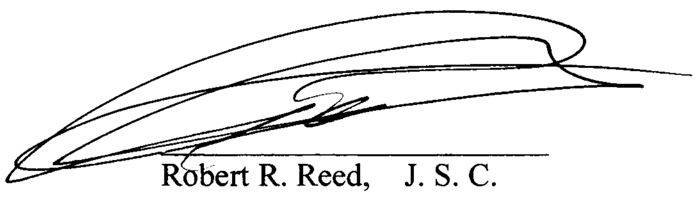
ADJUDGED and DECLARED that defendant U.S. Specialty Insurance Company is not obliged to provide a defense to, and provide coverage for, or indemnify plaintiffs Surrey Hotel Associates, LLC, Surrey Hotel Management Corp. and Hampshire Hotels Management, LLC in the said action pending in Queens County; and it further

ADJUDGED and DECLARED that defendant U.S. Specialty Insurance Company is not obliged to reimburse plaintiff Samsung Fire & Marine Insurance Company, Ltd. for the costs and expenses incurred in connection with its defense of the Surrey entities in the underlying action; and it further

ADJUDGED that defendant U.S. Specialty Insurance Company does recover from the plaintiffs, Surrey Hotel Associates, LLC, Surrey Hotel Management Corp., Hampshire Hotels Management, LLC, and Samsung Fire & Marine Insurance Company, Ltd., costs and disbursements as taxed by the Clerk, and defendant U.S. Specialty Insurance Company have execution therefor;

This constitutes the decision and order of the court.

Dated: January 3, 2018



Robert R. Reed, J. S. C.