

**Starr Indem. & Liab. Co. v Sentinel Ins. Co., Ltd.**

2020 NY Slip Op 31859(U)

June 15, 2020

Supreme Court, New York County

Docket Number: 653659/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM**

*Justice*

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INDEX NO. 653659/2019

STARR INDEMNITY & LIABILITY COMPANY,

Plaintiff,

MOTION SEQ. NO. 001

- v -

SENTINEL INSURANCE COMPANY, LTD., ZEP  
ENTERPRISES, INC.,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31

were read on this motion to/for DISMISSAL.

In this declaratory judgment action commenced by plaintiff Starr Indemnity & Liability Company (“Starr”) against defendants Sentinel Insurance Company, Ltd. (“Sentinel”) and Zep Enterprises, Inc. (“Zep”), Zep moves, pursuant to CPLR 3211(a)(7), for an order dismissing the complaint against it. Starr opposes the motion. After consideration of the positions of the parties, as well as the relevant statutes and case law, the motion is decided as follows.

**FACTUAL AND PROCEDURAL BACKGROUND:**

Starr commenced this action seeking a declaration that Sentinel is obligated to defend and indemnify Starr’s insured, Popeye Assets, LLC (hereinafter “Popeye”) in an underlying personal injury action styled *Rafaela Daniel v. Dyckman Medical Services, P.C., Dyckman Dental Arts, P.C., Dyckman Medical and Dental Arts Center, Dyckman Dental Arts Center, and Popeye Assets, LLC* filed in this Court under Index Number 157994/2016 (hereinafter “the

underlying action”). Starr claims that Popeye is entitled to coverage from Sentinel under a general liability policy of insurance Sentinel provided to Zep, as well as a lease between Popeye’s predecessor in interest, NRP, LLC II (“NRP”) and Zep. In its complaint, Starr alleges that the lease agreement between NRP, as landlord, and Zep, as tenant, required Zep to obtain liability insurance naming NRP, as well as its successors in interest, as additional insureds. In accordance with the lease, Zep obtained liability insurance from Sentinel that included an endorsement providing additional insured status to the landlord as required by the lease. Starr tendered the defense and indemnification of Popeye in the underlying action to Sentinel, which denied coverage. Starr is now providing a defense and indemnification to Popeye in the underlying action and is seeking to have Sentinel take over that defense, indemnify Popeye, and reimburse Starr for its expenses and costs.

Plaintiff seeks a declaration that Sentinel is required to defend and indemnify Popeye in the underlying action on a primary and non-contributory basis and that Sentinel must reimburse Starr for any costs and fees it has incurred in defending the underlying action to date. Starr does not allege any direct claims against Zep.

Starr commenced the captioned action by filing a summons and complaint on or about June 24, 2019. Doc. 1. As a first cause of action, Starr alleged that Sentinel failed to provide a defense to Popeye in the underlying action and requested a determination of Starr’s rights with regard to the Sentinel policy and a declaratory judgment that Sentinel was required to defend Popeye in the underlying action. As a second cause of action, Starr alleged that, because Sentinel refused to defend or indemnify Popeye, Starr incurred defense costs and attorneys’ fees in defending the underlying action. The second cause of action further sought an order directing Sentinel to reimburse Starr for the costs and expenses it incurred in the underlying action. In its

third cause of action, Starr alleged that it was entitled to recover a money judgment against Sentinel for indemnification of any defense costs incurred by Starr on behalf of Popeye in the underlying action.

Sentinel and Zep thereafter joined issue by filing their respective answers. Docs. 7, 8.

Zep now moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint on the ground that it fails to state a cause of action against it. Specifically, Zep argues that Starr fails to state a cause of action because the complaint contains no causes of action against it. Additionally, urges Zep, Starr does not allege that Zep failed to obtain insurance as required by the lease or that it otherwise breached the lease in any way.

In opposition, Starr argues that Zep's motion must be denied since it is a necessary party to the action. Specifically, Starr argues that:

Zep is an interested party in this action because it was Zep's obligation to procure additional insured coverage for [NRP]. To the extent there is a determination that the Sentinel policy does not provide additional insured coverage, it is likely Zep will be faced with a breach of contract claim for the failure to procure insurance. As Zep may either benefit by a determination that there is indeed an additional insured coverage obligation owed by Sentinel or be adversely affected if there is a determination that no such coverage is owed, Zep is clearly a necessary party.

Doc. 29 at 6.

Starr further asserts that Zep's motion is untimely.

In reply, Zep argues that, if the issue in this action was coverage for the defense and indemnification of Zep, then it would be a necessary party. However, asserts Zep, it is not a necessary party because the only issue herein is whether Starr is entitled to additional insured coverage under the Sentinel policy.

**LEGAL CONCLUSIONS:**

In support of its motion to dismiss, Zep correctly relies on *Admiral Indem. Co. v Travelers Cas. Ins. Co. of Am.*, 2015 NY Slip Op 31136(U) (Sup Ct New York County 2015).

In that case, this Court (Madden, J.) stated that:

Necessary parties are those who might be inequitably affected by a judgment in the action or who "ought to be joined" if complete relief is to be accorded to the parties in the action. CPLR 1001(a). A party is necessary to an action if a judicial determination would affect the legal rights and relationships of that party. *Staten Island Hosp. v. Alliance Brokerage Corp.*, 137 AD2d 674, 677 (2d Dept 1988) (citing *State of New York v. Wolowitz*, 96 AD2d 47, 55 (2d Dept 1983)). "The primary reason for compulsory joinder of parties is to avoid multiplicity of actions and to protect nonparties whose rights should not be jeopardized if they have a material interest in the subject matter." *Joanne S. v. Carey*, 115 AD2d 4, 7 (1st Dept 1986).

*Admiral Indem. Co. v Travelers Cas. Ins. Co. of Am.*, *supra* at \*5-6 (Sup Ct, NY County 2015).

Applying this standard, this Court determines that Zep is not a necessary party to this action. Zep's presence in the action is not necessary for this Court to afford full relief to Starr in connection with the claims relating to the scope of Sentinel's policy coverage. Additionally, Zep's rights will not be compromised in any way if it is dismissed as a party, and no ruling in this action would adversely affect Zep's legal rights or relations. Contrary to Starr's argument, a declaration in this action will not directly impact Zep's interests since this action concerns only the extent of Sentinel's duty to defend and indemnify Starr in connection with the underlying action and whether Starr is entitled to additional insured coverage under the Sentinel policy. Moreover, as Zep asserts, there are no affirmative claims against it. *See Admiral Indem. Co. v Travelers Cas. Ins. Co. of Am.*, *supra* at \*11.

The parties' remaining contentions are either without merit or need not be addressed given the findings above.

Therefore, in light of the foregoing it is hereby:

ORDERED that the motion of defendant Zep Enterprises, Inc. to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that this constitutes the decision and order of the court.

6/15/2020  
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE