

**Hudson Meridian Constr. Group, LLC v Travelers  
Cas. Ins. Co. of Am.**

2022 NY Slip Op 31504(U)

May 9, 2022

Supreme Court, New York County

Docket Number: Index No. 655507/2021

Judge: Sabrina Kraus

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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. SABRINA KRAUS **PART** **57TR**

*Justice*

-----X

HUDSON MERIDIAN CONSTRUCTION GROUP, LLC,  
  
Plaintiff,

INDEX NO. 655507/2021

MOTION DATE May 9, 2022

MOTION SEQ. NO. 001 002

- v -

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ASMIR & DENIS CONSTRUCTION, INC.

**DECISION + ORDER ON MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 39, 40

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 4, 5, 6, 7, 8, 9, 10, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, May 2, 2022 Tender letter from Travelers

were read on this motion to/for DISMISS.

**BACKGROUND**

Plaintiff commenced this action seeking a declaratory judgment that Travelers Property Casualty Co. of America (Travelers) afford additional insured coverage to the plaintiff and ancillary monetary relief. The claims herein relate to an underlying action *Andrea Barriga Sanchez v. Tishman Speyer Properties, LP, Hudson Meridian Group Construction LLC, 21 Clark Street Property Owner, LLC, Kayne Anderson Real Estate Advisors, LLC, Freshwater Group LLC, Watermark Retirement Communities, LLC and 21 Clark Street Senior Housing, LLC*, Index No 500227/2021(The Sanchez Action).

**PENDING MOTIONS**

On March 31, 2022, Travelers moved for an order pursuant to CPLR 3042, CPLR 3124 and CPLR 3126 precluding plaintiff from offering any evidence at trial based upon its failure to

respond to the outstanding discovery demands or, in the alternative, compelling plaintiff to respond to the outstanding discovery demands.

On the same date, plaintiff cross-moved for an order striking Travelers' pleadings and precluding Travelers from offering any evidence at trial based upon its failure to respond to outstanding discovery demands or, in the alternative, compelling plaintiff to respond to the outstanding discovery demands and sanctioning Travelers.

On April 1, 2022, A&D moved for an order pursuant to CPLR §3211(a)(4) dismissing plaintiff's complaint on the grounds that there is another action pending seeking the same relief by the same parties.

On May 9, 2022, the court heard oral argument and reserved decision.

The motion and cross-motion to compel and for related relief are granted to the extent of directing the parties forthwith to proceed with a preliminary conference.

The motion to dismiss is denied for the reasons set forth below.

### **DISCUSSION**

#### ***The Relief Sought in This Action and The Sanchez Action Are Not Identical and Dismissal Pursuant to CPLR §3211(A)(4) Is Not Warranted***

Pursuant to CPLR §3211(a)(4), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that there is another action pending between the same parties for the same cause of action in a court of any state....." *See Liebert v. TIAA-CREF*, 34 A.D.3d 756, 757 (2d Dept. 2006).

A court will grant dismissal of a later filed action only where the relief sought is substantially the same as in the prior action. *White Light Productions, Inc. v. On The Scene Productions, Inc.*, 231 A.D.2d 90, 94(1st Dept. 1997).

The Sanchez Action includes an impleader Hudson filed in November 2021, entitled "Hudson Meridian Construction Group, LLC v. Asmir & Denis Construction, Inc.", (the Third-Party Action). Plaintiff's Third-Party Action against A&D is confined to causes of action in contribution, common law and contractual defense/indemnification and breach of contract for failure to procure insurance. The DJ Action does not plead or seek relief against A&D in contribution, common law/contractual defense/indemnification for the Sanchez Action. Nor does the DJ Action include a cause of action against A&D for breach of contract for failure to purchase additional insurance.

In *Reliance Ins. Co. v. American Elec. Power Co., Inc.*, 224 A.D.2d 235 (1st Dept. 1996), *app. denied*, 90 N.Y.2d 809, 664 N.Y.S.2d 271 (1997) the First Department considered whether to dismiss or stay a New York action to reform an insurance policy on the ground a prior action was pending in Ohio for recovery under the policy. In affirming denial of the motion, the Appellate Division reasoned that the "requisite complete identity of issues" did not exist because the two actions "are not mirror images" in that the Ohio action sought a declaration of the parties' rights under an insurance contract while the New York matter centered entirely on allegations concerning original negotiations to procure the policy. The instant action is analogous to the above First Department precedent, as the causes of action in the two matters in this case are not identical. Hudson's Third-Party Action is part and parcel of a personal injury Labor Law action, whereas the DJ Action is equitable in nature and focuses on insurance declarations.

Based on the foregoing the motion to dismiss is denied.

### **CONCLUSION**

WHEREFORE it is hereby:

ORDERED the motion and cross-motion to compel discovery and for related relief are granted to the extent of directing the parties to proceed with a Preliminary Conference forthwith; and it is further


ORDERED that A&D’s motion to dismiss is denied and A&D is directed to serve and file an answer to the complaint within 20 days from receipt of a copy of this order with notice of entry; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

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

  
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<u>5/9/2022</u> DATE					<hr/> <b>SABRINA KRAUS, J.S.C.</b>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE