

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

2023 NY Slip Op 31248(U)

April 18, 2023

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

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HUDSON MERIDIAN CONSTRUCTION GROUP, LLC,21
 CLARK STREET PROPERTY OWNER, LLC,WATERMARK
 RETIREMENT COMMUNITIES, LLC,21 CLARK STREET
 SENIOR HOUSING, LLC

INDEX NO. 655507/2021

MOTION DATE 03/27/2023

MOTION SEQ. NO. 004

Plaintiff,

- v -

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

**DECISION + ORDER ON
 MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff commenced this action seeking a declaratory judgment that Travelers Property Casualty Co. of America (Travelers) afford additional insured coverage to 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 MOTION

Travelers moves pursuant to CPLR § 3212 for summary judgment and an order providing that plaintiff’s demand for a declaration that Travelers has a duty to defend it in an underlying

action is moot. Travelers asserts that there is no controversy between the parties as to the duty to defend as Travelers has now agreed to defend plaintiff in the underlying action, and has already reimbursed plaintiff for all prior defense costs.

Travelers also seeks dismissal based on its assertion that plaintiff's demand for a declaration that Travelers must indemnify plaintiff in the underlying action is not ripe.

The motion was fully briefed and marked submitted on March 27, 2023. For the reasons stated below, the motion is granted.

DISCUSSION

Plaintiff's request for a declaration that Travelers must provide a defense in connection with the underlying matter is moot.

A court's jurisdiction extends only to live controversies. *Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 810-811(2003). Thus, a court will not ordinarily entertain a matter where the specific controversy between the parties is no longer existent. Under the mootness doctrine, a court is ordinarily precluded from considering questions which, although once live, have become moot by a change in circumstances. *Kennedy v Suffolk County*, 211 A.D.3d 926 (2d Dep't 2022).

A particular question of law is academic when it appears that the rights of the parties cannot be affected by the court's decision, and therefore any determination by the court in resolving the question would be purely advisory. *Town of Islip v. Cuomo*, 147 A.D.2d 56 (2d Dep't 1989).

Here, there is no justiciable issue concerning the duty to defend. Plaintiff made a demand that Travelers defend it in connection with the underlying action. Travelers has now accepted

that duty. Plaintiff also made demand for reimbursement of prior defense costs—Travelers paid it. There is nothing to litigate and no controversy between the parties as to the duty to defend.

Additionally, plaintiff has not been found liable for negligence in the underlying action at this time, and as such, the issue as to the duty to indemnify is not ripe for adjudication. The justiciable controversy upon which a declaratory judgment may be rendered requires that the controversy involve present, rather than hypothetical, contingent, or remote, prejudice to the plaintiffs. *American Ins. Ass'n v. Chu*, 64 N.Y.2d 379 (1985). An action is premature and, as a matter of law, may not be maintained if the issue presented for adjudication involves a future event beyond the control of the parties which may never occur. *Id.* Where the harm sought to be enjoined is contingent upon events which may not come to pass, the claim is nonjusticiable as wholly speculative and abstract. *New York Blue Line Council, Inc.*, 927 N.Y.S.2d 432 (3d Dep't 2011).

Plaintiff seeks a declaration that Travelers is required to indemnify it from all applicable damages attributed to it in the underlying action. However, there has not been a finding of damages against plaintiff, nor has there been a finding that plaintiff is liable to the underlying claimant for the alleged injuries sustained by said claimant in the underlying action.

The court has considered plaintiff's arguments in opposition and finds them unavailing.

WHEREFORE it is hereby:


ORDERED that the motion is granted, and the action is dismissed without prejudice to refile, if necessary, on Traveler's duty to indemnify plaintiff; and it is further

ORDERED that, within 20 days from entry of this order, movant 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); 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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4/18/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE