

**Kensington Estates Prop. Owner LLC v
State Farm Mut. Auto. Ins. Co.**

2025 NY Slip Op 32022(U)

May 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 503615/2024

Judge: Peter P. Sweeney

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 73 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York, on the 13th day of May, 2025.

P R E S E N T:

HON. PETER P. SWEENEY,
J.S.C.

KENSINGTON ESTATES PROPERTY OWNER LLC,
TRIANGLE EQUITIES BUILDERS, LLC, TRIANGLE
EQUITIES DEVELOPMENT COMPANY LLC, and
TRIANGLE EQUITIES MANAGEMENT CO, LLC,

Plaintiffs,

-against-

Index No.: 503615/2024

Motion Seq: 1-3

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ADMIRAL INSURANCE
COMPANY, CUSAY HOME IMPROVEMENT, INC.,
and PEDRO I. HERNANDEZ YANES,

DECISION, ORDER, AND JUDGMENT

Defendants.

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

Papers

NYSCEF Numbered

Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed	9-14; 17-20; 23-25
Opposing Affidavits (Affirmations)	34-42; 43-46; 47-50; 51-54
Reply Affidavits (Affirmations)	59; 61; 63
Other	

Upon the foregoing cited papers and after oral argument, defendant Admiral Insurance Company (Admiral) moved, pre-answer, in Seq. No. 1 for an order, pursuant to CPLR § 3211(a)(1) and (7), dismissing this action as against it, and, separately, in Seq. No. 2 for an order, pursuant to CPLR § 3211(a)(1) and (7), dismissing the respective cross-claims of defendant State Farm Mutual Automobile Insurance Company (State Farm) and nominal defendant Cusay Home Improvement, Inc. (Cusay) as against it. Concurrently, Cusay moved in

001
002
003

Seq. No. 3 for an order, pursuant to CPLR § 3211(a)(1) and (7), dismissing this action as against it.

This is an action for a judgment declaring that Admiral and State Farm are each obligated to defend and indemnify the aforecaptioned plaintiffs (collectively, Kensington) as an additional insured under their respective policies in the underlying action entitled *Yanes v Kensington Estates Property Owner LLC, et al.*, pending in Supreme Court, Queens County, under index No. 721534/2021 (the underlying action). The underlying action arose out of March 10, 2021 accident when nominal defendant Pedro I. Hernandez Yanes (Yanes) slipped and fell while working on a renovation project as a laborer for Cusay. At the time of the accident, Cusay maintained a commercial general liability policy with Admiral (the Admiral policy) and, separately, a commercial automobile liability policy with State Farm (the State Farm policy), with each policy naming Kensington as an additional insured. On September 28, 2021, Yanes commenced the underlying action against Kensington to recover damages for personal injuries (a broken left wrist) which he sustained in the accident. On February 20, 2023, Kensington impleaded Cusay for (among other claims) contractual indemnification. By letter, dated April 28, 2023, Admiral agreed to “provide [Kensington] a defense regarding the underlying action” (in the form of paying the reasonable costs of Kensington’s already retained defense counsel),¹ subject to Admiral’s “no-coverage” position that the “underlying claim [fell] within the scope of the auto exclusion [of the Admiral policy], regardless of whether [the accident happened because] . . . Yanes slipped and fell on a water bottle that was left in the truck [which is Cusay’s version of the accident], or if he slipped and fell on ice as he was exiting the truck

¹ Admiral’s letter to Kensington’s defense counsel, dated April 28, 2023, page 6 of 8 (NYSCEF Doc No. 12).

while unloading a shovel [which is Yanes' version of the accident]."² Unlike Admiral, State Farm declined to provide any defense to Kensington in the underlying action.

As noted, Admiral, in lieu of an answer, moved to dismiss this action (as well as State Farm's and Cusay's respective cross-claims), whereas Cusay (though a nominal defendant with no claims asserted against it in this action) likewise moved to dismiss this action. The Court agrees with the movants that the initial (*i.e.*, the defense) portion of the relief requested in this action is academic because it is undisputed that Admiral has been paying for Kensington's defense in the underlying action. Likewise, the Court agrees with the movants that the remaining (*i.e.*, the indemnification) portion of the relief requested in this action is premature pending the outcome of a trial of the underlying action, which is currently in the pre-Note of Issue stage.

"The general rule is that a declaratory judgment as to [an insurer's] obligation to indemnify may be granted in advance of trial of the underlying tort action only if it can be concluded as a matter of law that there is no possible factual or legal basis on which the insurer may eventually be held liable under its policy." *First State Ins. Co. v J&S United Amusement Corp.*, 67 NY2d 1044, 1046 (1986). "An action to declare the insurer's duty to indemnify is premature and does not lie . . . where [as here] the issues of indemnification and coverage hinge on facts [here, as to how the accident occurred] which will necessarily be decided in [the] underlying action." *Hout v Coffman*, 126 AD2d 973, 973 (4th Dept 1987). The declaration of indemnification sought by Kensington from Admiral and State Farm in connection with the accident cannot be granted (or denied) in advance of the trial of the underlying action, and would be premature if it were to be made at this time. *See State Farm Fire and Cas. Co. v Russo*,

² Admiral's letter to Kensington's defense counsel, page 5 of 8.

227 AD3d 927, 930 (2d Dept 2024); *Ocean Gardens Nursing Facility, Inc. v Travelers Cos., Inc.*, 91 AD3d 734, 735 (2d Dept 2012); *Spodek v Liberty Mut. Ins. Co.*, 155 AD2d 439, 441 (2d Dept 1989); *Commerce & Indus. Ins. Co. v Sciales*, 132 AD2d 516, 516 (2d Dept 1987), *appeal dismissed* 70 NY2d 797 (1987); *State Farm Fire & Cas. Co. v Joslyn*, 99 AD2d 631, 632 (3d Dept 1984); *Allstate Ins. Co. v Santiago*, 98 AD2d 608, 608-609 (1st Dept 1983).

The court considered the parties' remaining contentions and found them either unavailing or moot in light of its determination.

Accordingly, it is

ORDERED that in Seq. Nos. 1, 2, and 3, each motion is granted; and it is further

ORDERED that this action is dismissed in its entirety, *without prejudice* and without costs/disbursements, as against Admiral, State Farm, Cusay, and Yanes (the latter as the non-appearing nominal defendant); and it is further

ORDERED that Admiral's counsel is directed to electronically serve a copy of this Decision, Order, and Judgment on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

The foregoing constitutes the Decision, Order, and Judgment of this Court.

ENTER,



HON. PETER P. SWEENEY
J. S. C.

2025 JUN - 5 A 10: 00

KINGS COUNTY CLERK
FILED