

**Anthony Jerome 2022 Revocable Living Trust v
Diocese of Brooklyn**

2025 NY Slip Op 33549(U)

September 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 522045-2024

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 522045-2024

Motion Date: 9-15-24

Mot. Seq. No.: 1

-----X
THE TRUST of: ANTHONY JEROME 2022
REVOCABLE LIVING TRUST.

Plaintiff,

-against-

DECISION/ORDER

DIOCESE OF BROOKLYN, ST. PETER CLAVER
CHURCH, THE BROOKLYN WALDORF SCHOOL,

Defendants.
-----X

The following papers, which are e-filed with NYCEF as items , were read on this motion:

In this action to recover for damages to property, in Motion Seq. #1, the firm of Morris Duffy Alonso Faley & Pitcoff, who were assigned by American Southern Home Insurance, who issued a policy of insurance to the defendant, THE BROOKLYN WALDORF SCHOOL, seeks an Order pursuant to CPLR § 321(b)(2) permitting them to withdraw as counsel.

BACKGROUND:

The plaintiff, THE TRUST of: ANTHONY JEROME 2022 REVOCABLE LIVING TRUST, initiated this action to recover for property damage that allegedly began in April 2023. The plaintiff claims that the ground floor of their property at 106 Putnam Avenue, Brooklyn, New York, started to cave in due to tree roots from a property occupied by The Brooklyn Waldorf School. The litigation commenced on August 15, 2024, with the filing of a Summons and Complaint. Issue was joined on September 6, 2024, by Defendants Diocese of Brooklyn and St. Peter Claver Church. The Brooklyn Waldorf School appeared in the action on October 15, 2024.

The plaintiff is claiming that its property was inhabitable for over a year and that such has caused financial and emotional hardship. The plaintiff also claims that the property is a

danger to the public due to the structural instability of the property, which is near a school, and that a timely disposition of the action is paramount. .

The defendant, The Brooklyn Waldorf School, had two consecutive liability insurance policies in early 2023. The first was an American Southern Home Insurance policy which provided coverage for the period of February 26, 2022 to February 26, 2023. The second was a United Educators Insurance Company policy which provided coverage for the period of February 26, 2023 to February 26, 2024. Morris Duffy Alonso Faley & Pitcoff was assigned as defense counsel for The Brooklyn Waldorf School by American Southern's managing agent, Wright Specialty Insurance, in March and April 2024. However, on April 2, 2025, American Southern disclaimed coverage, stating that the alleged property damage occurred after its policy had been canceled at the request of The Brooklyn Waldorf School on February 26, 2023. United Educators also disclaimed coverage on March 14, 2024, claiming the damage occurred before its policy period began.

The movant, Morris Duffy Alonso Faley & Pitcoff, argues that they should be permitted to withdraw as counsel for The Brooklyn Waldorf School because the defendant's insurance policy with American Southern Home Insurance was canceled on February 26, 2023, before the alleged property damage occurred in April 2023. They state that as The Brooklyn Waldorf School had an active policy with United Educators Insurance Company at the time of the alleged incident, any legal counsel should be provided by that company. The firm emphasizes that their request to withdraw is not on the eve of trial and that since only minimal discovery has taken place, their withdrawal will not have a material adverse effect on The Brooklyn Waldorf School's interests.

The plaintiff opposes the motion and maintains that the motion is untimely and prejudicial, as meaningful discovery has already taken place. Plaintiff contends that defense counsel had ample time to assess coverage issues. The defendant, The Brooklyn Waldorf School, through its general counsel, also opposes the withdrawal. The defendant argues that the withdrawal should be denied because there is no temporal gap between the two insurance policies, and his client was fully insured during the relevant period. He contends that American Southern's April 2, 2025, disclaimer came over a year after it initially accepted coverage and

assigned counsel, despite the alleged coverage defenses being available from the outset. He also asserts that a motion to withdraw is an improper vehicle to test an insurer's right to disclaim liability. Finally, he argues that forcing his client to secure new counsel at this stage, while also prosecuting a declaratory judgment action against the two insurers to determine who is responsible for coverage would cause substantial prejudice and delay.

DISCUSSION:

In moving for a judicially approved withdrawal in this case, the movant law firm is in essence seeking an implied judicial ratification of the disclaimer of the insurer who assigned them without a determination or declaration to that effect (*Monaghan v. Meade*, 91 A.D.2d 1014, 1015, 457 N.Y.S.2d 886, 887–88). It is settled law in this State that a motion to withdraw as counsel is a poor vehicle to test an insurer's right to disclaim liability or deny coverage (*Brothers v. Burt*, 27 N.Y.2d 905, 317 N.Y.S.2d 626, 265 N.E.2d 922; *Presley v. Williams*, 57 A.D.2d 947, 395 N.Y.S.2d 92). The appropriate vehicle to resolve such issue is a declaratory judgment action brought by the disclaiming insurer(*Presley v. Williams, supra*). A declaratory judgment it is the most expeditious and fairest method by which an insurer can secure an advance determination as to its contractual duty to defend or indemnify one of its policyholders (*Fireman's Fund Ins. Co. v. Burman, Inc.*, Rhode Island, 391 A.2d 99, 101; 20 Appleman, Insurance Law & Practice, § 11332; 6A Moore, Federal Practice [2d ed.], par. 57:19). Such an action is already pending. For these reasons, the motion should be denied. Further, allowing the withdrawal would also prejudice The Brooklyn Waldorf School as well as the plaintiff for the reasons stated in their opposing papers.

For the above reasons, it is hereby

ORDERED that the Motion Seq. #1 is **DENIED** in its entirety.

This constitutes the decision and Order of the Court.

Dated: September 16, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
FILED
2025 SEP 19 A 9:57