

Starr Indem. & Liab. Co. v Greenwich Ins. Co.

2020 NY Slip Op 34018(U)

December 1, 2020

Supreme Court, New York County

Docket Number: 653410/2020

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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INDEX NO. 653410/2020

STARR INDEMNITY & LIABILITY COMPANY,

MOTION DATE 11/19/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

GREENWICH INSURANCE COMPANY, NATIONAL
CASUALTY INSURANCE COMPANY

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is decided as follows:

Plaintiff Starr Indemnity and Liability Company (“Starr”) commenced the instant action on July 27, 2020 seeking a declaration that, *inter alia*, Greenwich Insurance Company (“Greenwich”) owes indemnity to Starr's insured, Americon Construction Inc. ("Americon") under a policy of insurance which Greenwich issued to its insured, Liberty Contracting ("Liberty"), in connection with an underlying lawsuit entitled, *Juan Mendez v. Bank of America, N.A., 219 West 81st Retail Holdings LLC and Americon Construction Inc.*, pending in the Supreme Court, New York County, bearing Index Number 152189/2012.

On September 16, 2013, Continental Insurance Company (“Continental”) commenced an action seeking a declaration that, *inter alia*, Greenwich and owes indemnification to Continental’s insured, Americon, in connection with the *Mendez* action. The *Mendez* action recently settled for \$3,500,00.00, of which \$1,000,000.00 was funded by Continental, the policy limits of an insurance policy issued to Americon, and \$2,500,000.00 was funded by Starr under an excess policy issued

to Americon, resulting in the filing of the instant action. The defendants in the instant action are Juan Mendez's employer, Liberty's insurance carriers. Greenwich insures Liberty under a policy with limits of \$1,000,000.00 and National Casualty Insurance Company ("National") insures Liberty under an excess policy.

Greenwich now seeks dismissal of the instant action pursuant to CPLR 3211(a)(4) arguing that there is a prior action pending between the parties. Plaintiff submits that it is undisputed that there was a prior action filed against Greenwich seeking additional insured coverage on behalf of Americon in connection with the Underlying Lawsuit. It is further undisputed that the same limits of the Policy are at issue in both the First and Second Declaratory Judgment Lawsuits. While Greenwich is correct in its argument that the issues in both actions are functionally identical and that both plaintiff insurance companies stand in the shoes of Liberty, the parties are not identical as the 2013 action was filed by the primary insurer and the instant action was filed by the excess insurer.

As such, as discussed in *John J. Campagna, Jr., Inc. v. Dune Alpin Farm Assocs.*, 81 A.D.2d 633, 634 (2d Dept. 1981), to best serve the interests of judicial economy while still preserving the rights of the parties, the court *sua sponte* orders the consolidation of these actions. The court may make such an order on a motion pursuant to CPLR 3211 (subd [a], par 4) even though neither party has requested such relief (see Seigel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR, C3211:19, p 25).

ORDERED that the motion is granted to the extent that the above-captioned action is consolidated in this Court with Continental Insurance Company vs. Greenwich Insurance Company and Liberty Contracting Corp, Index No. 158395/2013 pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 158395/2013 and the consolidated action shall bear the following caption:

CONTINENTAL INSURANCE COMPANY and STARR INDEMNITY & LIABILITY COMPANY,

Plaintiffs,

-against-

GREENWICH INSURANCE COMPANY, NATIONAL CASUALTY INSURANCE COMPANY and LIBERTY CONTRACTING CORP.,

Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court 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, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the

consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 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), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to appear for a virtual status conference to be scheduled by the Court.

12/1/2020
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	