

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

2022 NY Slip Op 32490(U)

July 22, 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

HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, Plaintiff,
INDEX NO. 655507/2021
MOTION DATE 07/08/2022
MOTION SEQ. NO. 003

- v -

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

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81 were read on this motion to/for AMEND CAPTION/PLEADINGS

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).

Sanchez, an employee of Madrid 1, allegedly fell from a ladder while working at a construction site located at 21 Clark Street, Brooklyn, NY, hereinafter the Project, on November 3, 2020, and suffered injuries.

In January 2021, Sanchez filed the Sanchez Action against, inter alia, Plaintiff as the claimed construction manager on the Project. Plaintiff joined issue and denied all material

allegations. Prior to the date of the Sanchez Occurrence, Plaintiff and A&D Constriction entered into a subcontract under which A&D agreed to perform certain work at the Project. A&D subcontracted certain of its Project work to Madrid 1, Sanchez' employer. The Hudson/A&D Subcontract required A&D provide additional insured coverage (defense/indemnity) for Plaintiff's benefit on the Project.

In April 2021, Plaintiff tendered to A&D's general liability carrier Travelers for additional insured protection for the Sanchez Action. Travelers has refused to accept Plaintiff's tender and honor the A&D insurance coverage obligations within the Hudson/A&D Subcontract. Currently, Plaintiff's own general liability insurer Southwest Marine and General Insurance Company affords Plaintiff a defense in the Sanchez Action.

In September 2021, Plaintiff filed this action against Travelers and its named insured A&D. Plaintiff seeks a declaration of additional insured coverage on a primary, non-contributory basis for the Sanchez Action under the Travelers policy issued to A&D. Plaintiff also seeks Travelers reimburse post tender defense costs incurred in the Sanchez Action. Plaintiff sued A&D as an interested party defendant to bind A&D to all rulings and prevent collateral attack in future proceedings on any substantive judgments rendered in this action.

The summons and complaint were filed on September 16, 2021.

On November 3, 2021, Defendant Travelers Casualty Insurance Company of America appeared by counsel and filed an answer.

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 issued a decision and order denying the motion, finding the causes of action in the two matters were not identical. The Sanchez Action is part and parcel of a personal injury Labor Law action, whereas the instant action is equitable in nature and focuses on insurance declarations.

When Plaintiff filed its coverage complaint in September 2021, A&D was not a party to the Sanchez Action. In November 2021, Plaintiff filed a third-party impleader against A&D for contribution/indemnification in the Sanchez Action. On March 10, 2022, Sanchez amended the complaint in the Sanchez Action to add A&D as a direct defendant.

PENDING MOTION

On May 10, 2022, Plaintiff moved pursuant to CPLR §3025(b) for leave to serve an amended complaint. A&D submitted opposition and Plaintiff submitted reply.

On July 8, 2022 the court reserved decision.

DISCUSSION

CPLR §3025(B) provides,

A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

Leave to amend pleadings is generally freely granted (*RBP of 400 W 42 St., Inc. v 400 W. 42nd St. Realty Assoc.*, 27 AD3d 250, 250 [1st Dept 2006]), although the court retains the sound discretion over whether to permit the amendment (*see Pellegrino v. New York City Ts. Auth.*, 177 AD2d 554,557 [2nd Dept 1991]). On a motion to amend a complaint the court will examine the underlying merits of the proposed causes of action (*Eighth Ave. Garage Corp. v H.K.L. Realty*

Corp., 60 AD3d 404, 405 [1st Dept 2009]), and the plaintiff must establish “that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]).

Plaintiff seeks to add certain additional factual allegations to buttress its claims for additional insured coverage against the defendants in this action. Specifically, Plaintiff seeks to amend its complaint in this action to interpose additional allegations raised in the Sanchez Action that did not exist in September 2021, when Plaintiff filed this suit against Travelers and A&D. Plaintiff asserts in support that discovery has just commenced, no depositions have occurred, and the note of issue has not been filed.

Travelers does not oppose the motion to amend the complaint.

In opposition, A&D argues the new allegations contained in Plaintiff’s proposed amended complaint unduly prejudice defendant A&D Construction, specifically that Plaintiff waited more than five (5) months before serving the amended complaint. A&D argues the newly plead allegations are contradictory to the assertions previously made by Plaintiff and have hindered A&D in the preparation of its case and have prevented A&D from succeeding on the merits of its prior motion to dismiss. A&D allege unfair surprise by virtue of Hudson’s proposed amendments to the complaint.

The Court disagrees that the newly plead allegations prevented A&D from succeeding on the prior motion to dismiss, as the Court noted the relief sought in the Sanchez Action is part and parcel of a personal injury Labor Law action, whereas the instant action is equitable in nature and focuses on insurance declarations.

The court also disagrees with A&D’s allegation undue prejudice in that Plaintiff delayed in moving to amend the complaint. The complaint in the Sanchez action was amended in March

2022 to add A&D as a direct defendant. Plaintiff filed the instant motion one month later to amend the complaint herein, to include similar allegations against A&D. There was no delay in seeking to amend the complaint. The proposed amended complaint in no way hinders A&D's preparation of it's case, as no significant discovery has taken place between the parties. A&D has failed to establish that the amended complaint resulted in any prejudice or surprise or was palpably insufficient or patently devoid of merit.

CONCLUSION

Wherefore, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; 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

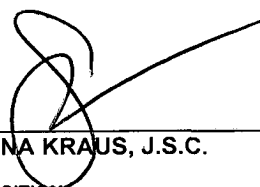
ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that counsel are directed to appear for a status conference via MS TEAMS on September 14, 2022 at 2:30 PM.

This constitutes the decision and order of the court.

7/22/2022
DATE


SABRINA KRAUS, J.S.C.

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