

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Plaintiff,

- against -

NEW YORK MERCHANTS PROTECTIVE
CO., INC., NMP HOLDINGS CORP.,
SHERVIN ALLEYNE, KARLENE
RODRIGUEZ, and RONALD J. FRIEDMAN,
individually and as Receiver for NMP
Holdings Corp. fka New York Merchants
Protective Company

Defendants.

CIVIL ACTION NO. 16-cv-1520

DECLARATORY JUDGMENT
COMPLAINT

ECF CASE

Philadelphia Indemnity Insurance Company ("Philadelphia"), by and through its attorneys, Marshall Conway & Bradley, P.C., as and for its declaratory judgment complaint alleges, upon knowledge with respect to itself and its own acts and upon information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 concerning the defendants' claims for insurance coverage under an insurance policy issued by Philadelphia relating to a lawsuit (the "Underlying Suit") initiated by Karlene Rodriguez with respect to injuries she allegedly sustained in a vehicle collision.

2. Defendants New York Merchants Protective Co., Inc. ("New York Merchants") and NMP Holdings Corp. ("NMP Holdings") demanded that Philadelphia

defend and indemnify them with respect to the Underlying Suit under a certain policy of insurance issued by Philadelphia.

3. Philadelphia thus files this lawsuit in order to obtain a declaration that it has no duty to defend or indemnify its insureds with respect to the Underlying Suit.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) because this action arises between citizens of different states and meets the jurisdictional requirement for the amount in controversy.

5. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue in this District is proper under 28 U.S.C. § 1391(c)(1) because the defendant New York Merchants and/or NMP Holdings maintain their principal executive office in this District and are subject to personal jurisdiction in this District.

PARTIES

7. Plaintiff, Philadelphia Indemnity Insurance Company, (again, "Philadelphia") is a corporation authorized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at One Bala Plaza, Bala Cynwyd, Pennsylvania.

8. At all relevant times, defendant New York Merchants was a New York corporation with its principal executive office located at 75 West Merrick Rd., Freeport, New York, 11520.

9. At all relevant times, defendant NMP Holdings was and is a New York

Corporation with its principal place of business at 75 West Merrick, Road, Freeport, New York 11520. NMP Holdings was previously known as New York Merchants Protective Co., Inc. until on or about January 4, 2011.

10. At all relevant times, defendant Shervin Alleyne was a New York resident.

11. At all relevant times, defendant Richard Friedman was and is a New York resident.

12. Karlene Rodriguez is a resident of the County of Kings, State of New York.

FACTUAL BACKGROUND

A. The Policy and Subject Vehicle

13. Philadelphia issued Business Automobile Policy, Policy No. PHPK823035 for the policy period January 27, 2012 to January 27, 2013 (hereinafter, the “Policy”) to New York Merchants Protective Co., Inc. (*See, Policy # PHPK823035, annexed as Exhibit A*).

14. In relevant part, the Policy provided Commercial Automobile Liability coverage to New York Merchants Protective Co. with a \$1,000,000 limit.

15. A vehicle with registration number 1GBDS14F888100629 (hereinafter, the “subject vehicle”) was listed as a “specifically described auto” under the Policy.

16. The subject vehicle is a 2008 Chevrolet which on May 30, 2012 bore the license plate number M33022 for the Commonwealth of Massachusetts.

B. The Collision

17. On May 30, 2012, the subject vehicle, while operated by Shervin S. Alleyne,

was involved in a collision accident with another vehicle in Brooklyn, New York.

18. A passenger in the other vehicle, Karlene Rodriguez, allegedly sustained bodily injuries.

19. Shervin Alleyne was driving the subject vehicle on May 30, 2012.

20. Shervin Alleyne was driving the subject vehicle in the course and scope of his employment on May 30, 2012.

21. Shervin Alleyne was employed by NYMP Acquisition, LLC on May 30, 2012. (*See Affidavit of Shervin Alleyne, annexed as Exhibit B*).

C. The Underlying Lawsuit

22. In or about November 15, 2012, Karlene Rodriguez commenced a lawsuit against New York Merchants, NMP Holdings, Shervin Alleyne and Nigel Carty (the driver of the other vehicle), in the Supreme Court, County of Kings, Index No. 2246/12 (the “*Rodriguez* action”). (*See, a copy of the Complaint in the Rodriguez action, annexed as Exhibit C*).

23. On or about March 5, 2013, a copy of the *Rodriguez* Complaint was forwarded to Philadelphia. Philadelphia assigned counsel to defend the *Rodriguez* action.

D. The Sale of the Subject Vehicle

24. On January 5, 2011, Bank of America filed an action in the United States District Court for the Eastern District of New York entitled *Bank of America, N.A., individually and as successor to LaSalle Bank, National Association, a national banking association v. New York Merchants Protective Co., Inc., a New York Corporation, New York*

Merchants Alarm Response, Inc., a Delaware Corporation, and NY Merch Prot Co., Inc., a Delaware Corporation (hereinafter the “BOA Action”). The BOA Complaint alleged that New York Merchants, through its CEO and shareholder, Wayne Wahrsager, defrauded the Bank of America in an amount in excess of \$17 million dollars.

25. By order dated January 19, 2011, the Court appointed Ronald J. Friedman as the Receiver for New York Merchants, among other entities. (***See January 19, 2011 Order, annexed as Exhibit D***).

26. The Order authorized Mr. Friedman to operate and manage New York Merchants until its assets were sold, to take possession of New York Merchants’ accounts and assets and to use New York Merchants’ cash and other assets in the ordinary course of business, to communicate with parties having existing contracts with New York Merchants, to negotiate and enter into new contracts on behalf of New York Merchants and to extend, renew, renegotiate and/or terminate existing contracts as a part of the Receiver’s operation of New York Merchants’ business.

27. Mr. Friedman moved the Court to sell all of the properties of New York Merchants, including the subject vehicle. (***See Receiver’s Declaration in Support of His Motion to Sell Substantially All of Defendants’ Assets Free and Clear of Liens and Encumbrances Pursuant to 28 U.S.C. §§ 2001 and 2004, annexed hereto as Exhibit E***).

28. By Order dated October 19, 2011, the Court authorized the proposed sale of substantially all of New York Merchants’ assets. (***See October 19, 2011 Order, annexed hereto as Exhibit F***).

29. On or about February 24, 2012, New York Merchants sold “substantially all” of its assets to NYMP Acquisition, LLC (“NYMP Acquisition”). (***See Transaction***

Summary, annexed hereto as Exhibit G)

30. The assets sold by New York Merchants included all “Automotive Vehicles.”

31. The subject vehicle was one of the “Automotive Vehicles” sold by New York Merchants on or about February 24, 2012.

32. New York Merchants did not notify Philadelphia of the sale of the subject vehicle prior to May 30, 2012.

33. Coverage for the subject vehicle under the Philadelphia policy was terminated upon the sale of the subject vehicle.

34. Circumstances exist that justify a determination by this Court, pursuant to 28 U.S.C. 2201, of the rights and obligations of the parties under the Policy, and that determination will be beneficial to both plaintiff and defendants.

35. Philadelphia has no adequate remedy at law.

FIRST CAUSE OF ACTION

36. Philadelphia repeats, reiterates, and re-alleges all prior allegations of the Complaint as if set forth at length herein.

37. Ronald J. Friedman in his capacity as Receiver of New York Merchants sold the subject vehicle on or about February 24, 2012. (*See Receiver’s Bill of Sale, Exhibit H*).

38. Philadelphia is entitled to a declaratory judgment that Ronald J. Friedman sold the subject vehicle on or about February 24, 2012.

39. Philadelphia is further entitled to a declaratory judgment that on May 30, 2012, neither New York Merchants nor NMP Holdings had an “insurable interest” in the subject vehicle, and accordingly, New York Merchants and NMP Holdings are not entitled to

defense or indemnification in the *Rodriguez* action.

SECOND CAUSE OF ACTION

40. Philadelphia repeats, reiterates, and re-alleges all prior allegations of the Complaint as if set forth at length herein.

41. On May 30, 2012, Shervin Alleyne was not an employee of New York Merchants Protective Co.

42. On May 30, 2012, Shervin Alleyne was not an employee of NMP Holdings.

43. Philadelphia is entitled to a declaratory judgment that Shervin Alleyne is not entitled to insured status under the Policy for the accident of May 30, 2012.

44. Philadelphia is entitled to a declaratory judgment that Shervin Alleyne is not entitled to a defense or indemnification under the Policy in the *Rodriguez* action.

WHEREFORE, Philadelphia respectfully requests that this Court issue a declaratory judgment:

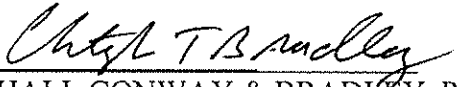
- a. That Ronald J. Friedman, in his capacity as receiver for New York Merchants, sold the subject vehicle on or about February 24, 2012;
- b. That neither New York Merchants nor NMP Holdings owned the subject vehicle on May 30, 2012;
- c. That Philadelphia has no duty to defend or indemnify New York Merchants or NMP Holdings in the *Rodriguez* action;
- d. That on May 30, 2012, Shervin Alleyne was not an employee of New York Merchants;

- e. That on May 30, 2013, Shervin Alleyne was not an employee of NMP Holdings;
and;
- f. That Shervin Alleyne is not entitled to a defense or indemnity under the Policy in
the *Rodriguez* action.

JURY DEMAND

Philadelphia demands trial by jury of all issues so triable in this cause.

Dated: March 28, 2016
New York, New York


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