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David Lang, Appellant, v. Hanover Insurance Company et al., Respondents.

No. 144

COURT OF APPEALS OF NEW YORK

2004 N.Y. LEXIS 3525

November 18, 2004, Decided

NOTICE: [*1] THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE NEW YORK REPORTS.

PRIOR HISTORY: Lang v. Hanover Ins. Co., 309 A.D.2d 1123, 766 N.Y.S.2d 915, 2003 N.Y. App. Div. LEXIS 11242 (N.Y. App. Div. 3d Dep't, 2003)

DISPOSITION: Order of the appellate division affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff injured party filed a declaratory judgment action against defendant insurer after the insurer disclaimed coverage on a personal injury claim. The appellate division (New York) reversed a denial by the supreme court of the insurer's motion to dismiss and dismissed the declaratory judgment action on the ground that N.Y. Ins. Law § 3420 precluded an action against a tortfeasor's insurer until a judgment was secured against the tortfeasor.

OVERVIEW: The injured party received an eye injury when hit with a "paintball" at the insured's home. The paintball was fired by the alleged tortfeasor, a guest in the home. When notified of the injured party's claim, the insurer denied it based on the ground that the guest was not an insured party under the policy. The injured party filed a personal injury action against the guest but learned that the guest had filed a bankruptcy petition. At that point, the injured party filed his declaratory judgment action. On appeal, the issue was whether the injured party could bring a declaratory judgment action against the insurer before securing a judgment against

the tortfeasor. The court held that the injured party could not bring a declaratory judgment action because § 3420 required that a judgment against the guest had to be obtained as a condition precedent to suit under the statute. The fact that the guest had been discharged in bankruptcy did not preclude the injured party from obtaining a judgment against him and then seeking recovery under § 3420 from the insurer.

OUTCOME: The appellate division's order was affirmed.

LexisNexis(R) Headnotes

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing Insurance Law > Claims & Contracts

[HN1] N.Y. Ins. Law § 3420 grants an injured plaintiff the right to sue a tortfeasor's insurance company to satisfy a judgment obtained against the tortfeasor.

Civil Procedure > Remedies > Declaratory Relief Insurance Law > Claims & Contracts > Declaratory Relief

[HN2] Parties to an insurance contract--the issuer, a named insured or a person claiming to be an insured under the policy--may bring a declaratory judgment action against each other when an actual controversy develops concerning the extent of coverage, the duty to defend, or other issues arising from the insurance contract.

Civil Procedure > Entry of Judgments > Enforcement & Execution

***Civil Procedure > Justiciability > Standing
Insurance Law > Claims & Contracts***

[HN3] Under the common law, an injured person possess no cause of action against the insurer of the tort-feasor. When a plaintiff acquires a judgment against an insured and the insured fails to satisfy the judgment due to insolvency, the plaintiff cannot sue the insurance company directly because there is no privity of contract between plaintiff and the insurance carrier. A direct suit by an injured party against the tortfeasor's insurer is thus unknown to the common law.

Contracts Law > Contract Conditions & Provisions > Express Warranties

Insurance Law > Claims & Contracts

[HN4] N.Y. Ins. Law § 3420, requires that every insurance policy issued in New York contain a provision that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy of contract. N.Y. Ins. Law § 3420(a)(1).

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing

Insurance Law > Claims & Contracts

[HN5] See N.Y. Ins. Law § 3420(b)(1).

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing

Insurance Law > Claims & Contracts

[HN6] See N.Y. Ins. Law § 3420(a)(2).

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing

Civil Procedure > Remedies > Declaratory Relief

[HN7] N.Y. Ins. Law § 3420 grants an injured party a right to sue the tortfeasor's insurer, but only under limited circumstances--the injured party must first obtain a judgment against the tortfeasor, serve the insurance company with a copy of the judgment and await payment for 30 days. Compliance with these requirements is a condition precedent to a direct action against the insurance company.

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing

Insurance Law > Claims & Contracts

[HN8] The effect of N.Y. Ins. Law § 3420 is to give to an injured claimant a cause of action against an insurer

for the same relief that would be due to a solvent principal seeking indemnity and reimbursement after a judgment has been satisfied. The cause of action is no less but also it is no greater. Once the statutory prerequisites are met, the injured party steps into the shoes of the tortfeasor and can assert any right of the tortfeasor-insured against the insurance company.

Civil Procedure > Justiciability > Standing

Civil Procedure > Remedies > Declaratory Relief

Insurance Law > Claims & Contracts > Declaratory Relief

[HN9] N.Y. C.P.L.R. 3001 authorizes a court to declare the rights and other legal relations of the parties to a justiciable controversy, providing a procedure for parties to resolve disputes over existing rights and obligations. What distinguishes declaratory judgment actions from other types of actions or proceedings is the nature of the primary relief sought--a judicial declaration rather than money damages or other coercive relief. But nothing in the language of N.Y. C.P.L.R. 3001 alters the precedent regarding an injured party's standing to sue a tortfeasor's insurer.

Bankruptcy Law > Discharge

Civil Procedure > Entry of Judgments > Enforcement & Execution

Civil Procedure > Justiciability > Standing

Insurance Law > Claims & Contracts > Declaratory Relief

[HN10] A plaintiff has no common-law right to seek relief directly from a tortfeasor's insurer, and the statutory right created in N.Y. Ins. Law § 3420 arises only after the plaintiff has obtained a judgment in an underlying personal injury action. That the tortfeasor has obtained a bankruptcy discharge does not change this analysis. Far from supplying a reason for disregarding the statutory requirements, the bankruptcy or insolvency of an insured is precisely the situation § 3420 was intended to address. The statute makes clear that bankruptcy does not relieve an insurance company of its obligation to pay damages for injuries or losses covered under an existing policy. § 3420(a)(1). Where there has been a discharge in bankruptcy, federal courts have held that the permanent injunction that follows does not bar a plaintiff in a personal injury action from obtaining a judgment against the bankrupt defendant for the limited purpose of pursuing payment from the defendant's insurance carrier.

COUNSEL: Jeffrey G. Pomeroy, for appellant.

Frederick F. Shantz, for respondents. CCC Insurance Company, Ltd. et al., amicus curiae.

JUDGES: Opinion by Judge Graffeo. Chief Judge Kaye and Judges Smith, Ciparick, Rosenblatt, Read and Smith concur.

OPINIONBY: GRAFFEO

OPINION: GRAFFEO, J.:

[HN1] Insurance Law § 3420 grants an injured plaintiff the right to sue a tortfeasor's insurance company to satisfy a judgment obtained against the tortfeasor. The issue presented in this appeal is whether the injured party may bring a declaratory judgment action against the insurance company before securing a judgment against the tortfeasor. We hold that a judgment is a statutory condition precedent to a direct suit against the tortfeasor's insurer.

Plaintiff David Lang was injured when he was struck in the eye while playing "paintball" at the home of John and Elizabeth Durbin. The paintball shot that hit plaintiff was fired by Richard Bachman, a houseguest of the Durbins. When notified of the incident, defendant Hanover Insurance Company, the Durbins' homeowners' [*2] liability insurance carrier, promptly disclaimed coverage for Bachman's acts on the ground that Bachman was not an insured party under the terms of the policy.

A year after the incident, plaintiff commenced a personal injury action against Bachman seeking damages for his alleged negligent conduct. After serving the complaint, plaintiff learned that Bachman had filed a Chapter 7 bankruptcy petition. A bankruptcy discharge was issued in April 2002.

While the personal injury case was pending, plaintiff also initiated this declaratory judgment action against Hanover challenging the disclaimer of coverage. Plaintiff sought a declaration that Bachman was an insured under the Durbin policy and that Hanover was therefore obligated to compensate Lang for the injuries Bachman negligently caused. Hanover answered and moved to dismiss the complaint. Among other arguments, Hanover asserted that plaintiff lacked standing to sue Hanover directly because plaintiff had not yet obtained a judgment against Bachman, Hanover's purported insured.

Supreme Court denied the motion to dismiss. On appeal, the Appellate Division reversed and dismissed the declaratory judgment action on the ground that Insurance Law § 3420 [*3] precludes a direct action by an injured party against a tortfeasor's insurance company until a judgment has been secured against the tortfeasor and that judgment has been served on the insurance company but has remained unpaid for 30 days. We affirm.

There is no dispute that [HN2] parties to an insurance contract -- the issuer, a named insured or a person claiming to be an insured under the policy -- may bring a declaratory judgment action against each other when an actual controversy develops concerning the extent of coverage, the duty to defend, or other issues arising from the insurance contract. The question presented in this case is whether, and under what circumstances, a stranger to the policy -- an injured party who has sued a tortfeasor -- can bring a direct action against the tortfeasor's insurance company for a determination of coverage issues.

[HN3] Under the common law, "an injured person possessed no cause of action against the insurer of the tortfeasor" (*Jackson v Citizens Cas. Co.*, 277 NY 385, 389, 14 N.E.2d 446 [1938]). When a plaintiff acquired a judgment against the insured and the insured failed to satisfy the judgment due to insolvency, the plaintiff could not sue [*4] the insurance company directly because there was no privity of contract between plaintiff and the insurance carrier (*Burke v London Guar. and Acc. Co.*, 47 Misc 171, 93 N.Y.S. 652 [Kings Co 1905], *affd* 126 A.D. 933, 110 N.Y.S. 1124 [2d Dept 1908], *affd* 199 N.Y. 557, 93 N.E. 1117 [1910]). A direct suit by an injured party against the tortfeasor's insurer was thus unknown to the common law (*Thrasher v U.S. Liab. Ins. Co.*, 19 N.Y.2d 159, 166, 225 N.E.2d 503, 278 N.Y.S.2d 793 [1967]).

As a result, even when a tortfeasor had coverage under an existing insurance policy, the common-law rule created a hardship for an injured party who lacked the means to sue the insolvent tortfeasor's insurance company directly and was therefore unable to gain access to available insurance proceeds. "If the insured was insolvent, so that the person injured or the estate of one killed was unable to satisfy the judgment against him, the insurer in effect would be released. The policy being one of indemnity against loss suffered by the principal, it followed that the insured having suffered no damage, there was no loss for the insurer to indemnify" (*Jackson v Citizens Cas. Co.*, 277 NY at 389). Insurance [*5] companies thus were able to avoid paying judgments for losses that would have been covered under policies issued to their insureds.

In 1917, the Legislature remedied this inequity by creating a limited statutory cause of action on behalf of injured parties directly against insurers (*Coleman v New Amsterdam Cas. Co.*, 247 NY 271, 275, 160 N.E. 367 [1928]). That statutory right, presently codified at [HN4] Insurance Law § 3420, requires that every insurance policy issued in New York contain a provision "that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss

occasioned during the life of and within the coverage of such policy of contract" (Insurance Law § 3420[a][1]).

[HN5] Section 3420(b)(1) authorizes "any person who . . . has obtained a judgment against the insured . . . for damages for injury sustained or loss or damage occasioned during the life of the policy or contract" to maintain an action against the insurer "subject to the limitations and conditions of paragraph two of subsection (a) hereof." [HN6] Subparagraph (a)(2) [*6] states: "in case judgment against the insured . . . shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the insured, or upon the insured, and upon the insurer, then an action may . . . be maintained against the insurer."

[HN7] Insurance Law § 3420 therefore grants an injured party a right to sue the tortfeasor's insurer, but only under limited circumstances -- the injured party must first obtain a judgment against the tortfeasor, serve the insurance company with a copy of the judgment and await payment for 30 days. Compliance with these requirements is a condition precedent to a direct action against the insurance company (see *Thrasher v U.S. Liab. Ins. Co.*, 19 N.Y.2d at 166). As Chief Judge Cardozo described it, [HN8] "the effect of the statute is to give to the injured claimant a cause of action against an insurer for the same relief that would be due to a solvent principal seeking indemnity and reimbursement after the judgment had been satisfied. The cause of action is no less but also it is no greater" (see *Coleman v New Amsterdam Cas. Co.*, 247 NY at 275). [*7] Once the statutory prerequisites are met, the injured party steps into the shoes of the tortfeasor and can assert any right of the tortfeasor-insured against the insurance company.

Here, it is undisputed that plaintiff did not obtain a judgment against Bachman, the alleged tortfeasor. Having failed to fulfill the condition precedent to suit, plaintiff could not pursue a direct action against Hanover and the Appellate Division properly granted Hanover's motion to dismiss the complaint.

Plaintiff's reliance on CPLR 3001, the statute that governs declaratory judgment actions, is misplaced. [HN9] CPLR 3001 authorizes a court to declare "the rights and other legal relations of the parties to a

Under those circumstances, having chosen not to participate in the underlying lawsuit, the insurance carrier may litigate only the validity of its disclaimer and cannot challenge the liability or damages determination underlying the judgment.

Accordingly, the order of the Appellate Division should be affirmed, with costs. Opinion by Judge

justiciable controversy," providing a procedure for parties to resolve disputes over existing rights and obligations. What distinguishes declaratory judgment actions from other types of actions or proceedings is the nature of the primary relief sought -- a judicial declaration rather than money damages or other coercive relief (*Solnick v Whalen*, 49 N.Y.2d 224, 229, 401 N.E.2d 190, 425 N.Y.S.2d 68 [1980]). But nothing in the language of CPLR 3001 [*8] alters the precedent regarding an injured party's standing to sue a tortfeasor's insurer. [HN10] Plaintiff has no common-law right to seek relief directly from a tortfeasor's insurer, and the statutory right created in Insurance Law § 3420 arises only after plaintiff has obtained a judgment in the underlying personal injury action. That Bachman has obtained a bankruptcy discharge does not change our analysis. Far from supplying a reason for disregarding the statutory requirements, the bankruptcy or insolvency of an insured is precisely the situation Insurance Law § 3420 was intended to address. The statute makes clear that bankruptcy does not relieve the insurance company of its obligation to pay damages for injuries or losses covered under an existing policy (Insurance Law § 3420[a][1]). Where there has been a discharge in bankruptcy, federal courts have held that the permanent injunction that follows does not bar a plaintiff in a personal injury action from obtaining a judgment against the bankrupt defendant for the limited purpose of pursuing payment from defendant's insurance carrier (see e.g. *Green v Welsh*, 956 F.2d 30 [*9] [2d Cir 1992]). Even if we were to assume that the potential personal liability judgment was listed in Bachman's bankruptcy petition, the discharge would not prevent plaintiff from obtaining a judgment against Bachman, thereby satisfying the section 3420 condition precedent to suit against Hanover.

Finally, we note that an insurance company that disclaims in a situation where coverage may be arguable is well advised to seek a declaratory judgment concerning the duty to defend or indemnify the purported insured. If it disclaims and declines to defend in the underlying lawsuit without doing so, it takes the risk that the injured party will obtain a judgment against the purported insured and then seek payment pursuant to Insurance Law § 3420.

Graffeo. Chief Judge Kaye and Judges Smith, Ciparick, Rosenblatt, Read and Smith [*10] concur.

Decided November 18, 2004

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