

1191WN

Print Request: LEXSEE

Time of Request: March 31, 2004 12:29 PM EST

Number of Lines: 74

Job Number: 1842:0:11160549

Client ID/Project Name: 8-3022

Research Information:

Lexsee 759 N.Y.S.2d 531

Send to: BENTON, CHARLES
BRUNO GERBINO & SORIANO
445 BROADHOLLOW RD
MELVILLE, NEW YORK 11747-3669

LEXSEE 759 N.Y.S.2D 531

**State Farm Mutual Automobile Insurance Company, appellant, v Jacques Laguerre, et al.,
defendants, Peter A. Gozzi, respondent. (Index No. 37404/01)**

2002-07506

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND
DEPARTMENT**

305 A.D.2d 490; 759 N.Y.S.2d 531; 2003 N.Y. App. Div. LEXIS 5387

April 15, 2003, Argued

May 12, 2003, Decided

NOTICE: [***1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING THE RELEASE OF THE FINAL PUBLISHED VERSION.

LexisNexis (TM) HEADNOTES- Core Concepts:

COUNSEL: McDonnell, Adels & Goodstein, P.C., Roslyn Heights, N.Y. (Anita Nissan Yehuda and Evan H. Krinick of counsel), for appellant.

Michael J. Asta, New York, N.Y., for respondent.

JUDGES: DAVID S. RITTER, J.P., MYRIAM J. ALTMAN, GABRIEL M. KRAUSMAN, STEPHEN G. CRANE, JJ. RITTER, J.P., ALTMAN, KRAUSMAN and CRANE, JJ., concur.

OPINION: [*490] [**532] DECISION & ORDER

In an action for a judgment declaring, inter alia, that the plaintiff is not obligated to provide liability coverage to the defendant Jacques Laguerre for a motor vehicle collision which occurred on February 11, 1999, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Garry, J.), dated May 23, 2002, as denied that branch of its motion which was, in effect, for summary judgment on so much of the complaint as seeks a declaration that it is not obligated to provide, among other things, liability coverage to the defendant Jacques Laguerre for the motor vehicle collision which occurred on February 11, 1999, and granted that branch of the cross motion of the defendant Peter A. Gozzi [***2] which was to declare that the plaintiff is obligated to defend and indemnify Jacques Laguerre in

an action entitled Gozzi v Jones, Index No. 111255/01, now pending in the Civil Court, New York County.

ORDERED that the order is reversed insofar as appealed from, [*491] on the law, with costs, that branch of the plaintiff's motion which was, in effect, for summary judgment on so much of the complaint as seeks a declaration that it is not obligated to provide, among other things, liability coverage to the defendant Jacques Laguerre for the motor vehicle collision which occurred on February 11, 1999, is granted, that branch of the cross motion of the defendant Peter A. Gozzi which was to declare that the plaintiff is obligated to defend and indemnify Jacques Laguerre in an action entitled Gozzi v Jones, Index No. 111255/01, now pending in the Civil Court, New York County, is denied, and the matter is remitted to the Supreme Court, Kings County, for the entry of a judgment so declaring.

Within weeks after the plaintiff issued insurance policies for vehicles registered to the defendant Jacques Laguerre, the vehicles [**533] were involved in three collisions. The defendant Peter A. Gozzi was the driver [***3] of a vehicle which was struck by a Laguerre vehicle on February 11, 1999. He commenced a personal injury action against Laguerre and the driver of Laguerre's vehicle. Based on its investigation, the plaintiff concluded that the collisions were not accidents, but were intentionally caused to fraudulently obtain insurance benefits. The plaintiff then commenced this action seeking a declaration, inter alia, that it was not obligated to provide liability coverage for any of the collisions. The Supreme Court granted the plaintiff summary judgment with respect to two of the collisions, but denied relief with respect to the February 11, 1999, collision, concluding that there were triable issues of fact. Although it found the existence

305 A.D.2d 490, *491; 759 N.Y.S.2d 531, **533;
2003 N.Y. App. Div. LEXIS 5387, ***3

of triable issues of fact, the Supreme Court nevertheless granted that branch of Gozzi's cross motion which was for a declaration that the plaintiff was obligated to defend and indemnify Laguerre in the underlying personal injury action.

A deliberate collision caused in furtherance of an insurance fraud scheme is not a covered accident (see *Matter of Metro Med. Diagnostics v Eagle Ins. Co.*, 293 A.D.2d 751, 741 N.Y.S.2d 284). The plaintiff established [***4] its prima facie entitlement to judgment as a matter of law by demonstrating that the February 11, 1999, collision was one of three collisions deliberately caused to fraudulently obtain insurance benefits. In opposition to the

motion, Gozzi failed to raise a triable issue of fact as to whether the collision was intentional. Contrary to Gozzi's contention, the plaintiff was not required by *Insurance Law § 3420(d)* to issue a disclaimer because its denial of coverage was based on a lack of coverage for the incident in the first instance, not an exclusion under the policy (see *Central Gen. Hosp. v Chubb [*492] Group of Ins. Cos.*, 90 N.Y.2d 195, 200, 659 N.Y.S.2d 246, 681 N.E.2d 413; *Zappone v Home Ins. Co.*, 55 N.Y.2d 131, 447 N.Y.S.2d 911, 432 N.E.2d 783; *Matter of Metro Med. Diagnostics v Eagle Ins. Co.*, *supra* at 752).

RITTER, J.P., ALTMAN, KRAUSMAN and CRANE, JJ., concur.

1191WN

***** Print Completed *****

Time of Request: March 31, 2004 12:29 PM EST

Print Number: 1842:0:11160549

Number of Lines: 74

Number of Pages: 2

Send To: BENTON, CHARLES
BRUNO GERBINO & SORIANO
445 BROADHOLLOW RD
MELVILLE, NEW YORK 11747-3669