

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

VASILE MARINCAS,	:	MARCH TERM, 2004
	:	
Plaintiff,	:	No. 03123
	:	
v.	:	COMMERCE PROGRAM
	:	
U.S. MAIL DELIVERY SYSTEM, INC.,	:	Control No. 082611
ST. PAUL FIRE AND MARINE INC., CO.,	:	
MIDLAND TRANSPORTATION, INC.	:	
PROGRESSIVE FIRE INSURANCE CO.,	:	
JEFFERSON FIRE INSURANCE CO.,	:	
VANDNA GUPTA, SIPI GUPTA,	:	
NACHIKETA GUPTA, GHANSYHYAN	:	
GUPTA, MIRCEA AIRINEI,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of October, 2004, upon consideration of St. Paul Fire and Marine Insurance Co.'s Preliminary Objections, plaintiff's response in opposition, the respective briefs, all other matters of record, and in accord with the contemporaneous Opinion, it is **ORDERED** that said Preliminary Objections are **OVERRULED**.

BY THE COURT,

ALBERT SHEPPARD, JR., J.

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NACHIKETA GUPTA, GHANSYHYAN	:	
GUPTA, MIRCEA AIRINEI,	:	
Defendants.	:	

OPINION

In this Declaratory Judgment action, plaintiff, Vasile Marincas, seeks coverage from a number of insurers, including defendant, St. Paul Fire and Marine Insurance Co. (“St. Paul”), with respect to an accident occurring in Philadelphia County that involved a tractor truck (owned by plaintiff) pulling a trailer allegedly insured by St. Paul.¹ Plaintiff asserts claims against St. Paul for breach of contract and bad faith for failure to provide coverage to plaintiff. St. Paul has filed Preliminary Objections to both claims.

¹ Defendants Vandna Gupta, Sipi Gupta, Nachiketa Gupta, and Ghansyhyan Gupta (the “Gupta Defendants”) were the occupants of a motor vehicle involved in the accident and are the plaintiffs in certain underlying tort litigation brought against Mr. Marincas and others. Defendant Mircea Airnei was plaintiff’s agent who was driving plaintiff’s tractor trailer at the time of the accident.

Defendants Midland Transportation, Inc. (“Midland”) and U.S. Mail Delivery System, Inc. (“U.S. Mail”) are alleged to have owned the cargo trailer that was being hauled by plaintiff’s tractor truck at the time of the accident. Defendants St. Paul and Progressive Insurance Co. (“Progressive”) are allegedly the insurers of U.S. Mail and Midland, respectively. Defendant Jefferson Fire Insurance Co. (“Jefferson”) allegedly insured plaintiff’s tractor truck.

Plaintiff asserted similar claims against Jefferson, U.S. Mail, St Paul, Midland, and Progressive in a prior action (the “Prior Action”).² The Prior Action was dismissed by another judge of this court for failure to join as indispensable parties the Gupta Defendants and Mircea Airnei.

I. The Dismissal of the Prior Action Does Not Bar Plaintiff From Bringing This Action.

St. Paul argues that plaintiff is precluded from bringing his claims in the present action because the Prior Action was dismissed with prejudice. “Strict *res judicata*, also known as claim preclusion, provides that where there is a final judgment on the merits, future litigation on the same cause of action is prohibited.” McGill v. Southwark Realty Co., 828 A.2d 430, 435 (Pa. Commw. 2003) (“a default judgment is *res judicata* with regards to transactions occurring prior to entry of judgment.”) However, the dismissal order in the Prior Action, which was based upon the failure to join indispensable parties, does not have *res judicata* effect.³

[I]n the absence of an indispensable party, the court lacks jurisdiction over the matters before it that affect the rights of the missing party. . . . Thus the trial court [must dismiss such an] action without reaching the merits of [plaintiff’s] claims since any order of the court on the merits would [be] null and void for want of jurisdiction.

D’Amico v. Royal Ins. Co., 383 Pa. Super. 239, 242, 556 A.2d 886, 887 (1988). *See also* Nicoletti v. Allegheny County Airport Auth., 841 A.2d 156 (Pa. Commw. 2004) (vacating trial court’s order and dismissing case without prejudice for lack of jurisdiction where plaintiff failed to join indispensable party).

² Philadelphia County Court of Common Pleas, November Term 2002, No. 01017.

³ The related doctrine of collateral estoppel also does not bar this action because the issues raised here were not “actually litigated” in the Prior Action. *See* McGill, 828 A.2d at 435.

Because the court in the Prior Action found that certain indispensable parties were not before it, it necessarily lacked jurisdiction over plaintiff's claims. Therefore, its order dismissing the Prior Action was not 'on the merits.' Although the court did not specifically say so, its order was also necessarily entered without prejudice to plaintiff's "right to institute a new action wherein all indispensable parties are made parties to the proceedings." Nicoletti, 841 A.2d at 163. Thus, the dismissal order entered in the Prior Action does not preclude plaintiff from bringing this action.⁴

II. St. Paul's Preliminary Objection to Plaintiff's Breach Of Contract Claim Must Be Overruled.

St. Paul objects that plaintiff's claim for breach of the insurance contract is barred by the applicable four year statute of limitations because the accident for which plaintiff is attempting to obtain coverage under the contract occurred more than four years before the filing of this suit. However, the statute of limitations on plaintiff's claim did not begin to run on that date.

The general rule is that the statute of limitations begins to run when the plaintiff's cause of action arises or accrues. . . . [A] cause of action for a declaratory judgment does not arise or accrue until an 'actual controversy' exists. . . . In this case, the 'actual controversy' surrounding the interpretation of the insurance policy at issue did not arise until [St. Paul] denied [plaintiff's] request for coverage.

Zourelias v. Erie Ins. Group, 456 Pa. Super. 775, 778, n. 2, 691 A.2d 963, 965, n. 2 (1997). The issue when, if ever, St. Paul denied coverage to plaintiff is a factual issue that the court cannot resolve at this stage in the proceedings.⁵ Therefore, St. Paul's Preliminary Objection based on

⁴ Since plaintiff has included as defendants in this action the parties deemed indispensable in the Prior Action, this action does not suffer from the same defect as the Prior Action.

⁵ "The appropriate means to raise the bar of the statute of limitations is as an affirmative defense with the filing of New Matter in a responsive pleading. However, [plaintiff] did not object to the issue being raised by means of preliminary objection," so the court has addressed the issue at this stage. Johnson v. Allgeier, 852 A.2d 1235, 1236, n. 1 (Pa. Super. 2004)

the statute of limitations must be denied without prejudice to its being raised again at a more appropriate stage in the case.

CONCLUSION

For these reasons, St. Paul Fire and Marine Insurance Co.'s Preliminary Objections are overruled.

BY THE COURT,

ALBERT SHEPPARD, JR., J.