Docket

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 16-01237

THE MASONIC TEMPLE ASSOCIATION OF QUINCY,
PLAINTIFF

V.

JAY PATEL and DIPIKA, INC.,
DEFENDANTS,
THIRD-PARTY PLAINTIFFS

V.

LEO MARTIN, SEYMOUR H. MARCUS a/k/a SY MARCUS, ROBLIN INSURANCE INC., TREACE LTD, QUINCY ADAMS BUILDING CORPORATION, SHEA STREET REALTY TRUST, ELLEN REA MARCUS as trustee of the Grossman Munroe Trust, and UNION INSURANCE COMPANY,
THIRD-PARTY DEFENDANTS

RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY
8/16/19

MEMORANDUM OF DECISION AND ORDER ON ROBLIN INSURANCE INC.'S MOTIONS FOR SUMMARY JUDGMENT AND UNION INSURANCE COMPANY'S MOTIONS FOR SUMMARY JUDGMENT

This case arises out of a fire that occurred at a Masonic Temple located at 1170 Hancock Street in Quincy, Massachusetts ("the Property"). Prior to the fire, the plaintiff, the Masonic Temple Association of Quincy ("the Masons"), entered into an agreement to sell the Property to the Grossman Munroe Trust ("the Trust") once the Trust had completed certain construction work on the Masonic Temple on the premises. The Trust subsequently undertook construction work on the Masonic Temple in September 2012. In April 2013, the Trust assigned the

agreement it had with the Masons to defendant Jay Patel. While construction was ongoing, a fire occurred resulting in severe damage to the Temple. The Masons brought this action against Patel and his company, Dipika, Inc. ("Dipika"), asserting claims related to the defendants' alleged failure to procure builder's risk insurance on the Property during construction. The Masons and Patel/Dipika also brought claims against Dipika's insurance agent Roblin Insurance Inc., and its insurer Union Insurance Company, for breach of contract, negligence, indemnification and contribution, and violation of G. L. c. 93A. Both the Masons and Patel/Dipika seek a declaratory judgment that Union has wrongfully denied insurance coverage for the loss on the Property.

Before the Court are the following motions for summary judgment: (1) Roblin Insurance Inc.'s Motion for Summary Judgment against the Masons; (2) Roblin Insurance Inc.'s Motion for Summary Judgment against Patel and Dipika; (3) Union Insurance's Motion for Summary Judgment against Patel and Dipika; and (4) Union Insurance's Motion for Summary Judgment against the Masons. After a hearing conducted on June 27, 2019, and for the reasons set forth below, the motions for summary judgment are all **Allowed**.

Legal Standard

Summary judgment shall be granted where there are no genuine issues as to any material facts and where the moving party is entitled to judgment as a matter of law. Mass. Rule of Civil Procedure 56(c); *Cassesso* v. *Commissioner of Correction*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank* v. *Dawes*, 369 Mass. 550, 553 (1976). The moving party bears the burden of establishing affirmatively the absence of a triable issue and that the summary judgment record entitles it to judgment as a matter of law. *Pederson* v. *Time, Inc.*, 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that

negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of its case at trial. *Flesner* v. *Technical Communications Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 710 (1991). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts establishing the existence of a genuine issue of material fact. *Pederson*, 404 Mass. at 17. The opposing party cannot defeat a motion for summary judgment by resting on its pleadings and mere assertions of disputed facts. *LaLonde* v. *Eissner*, 405 Mass. 207, 209 (1989). In deciding a motion under the Rule, the court may consider pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Community Nat'l Bank*, 369 Mass. at 553.

Factual Background

The following material facts, common to all parties, are undisputed. The Court reserves certain facts for discussion of the specific motions.

In the mid-2000s, the Masons, experiencing financial pressure and struggling to maintain the Temple on the Property, decided to sell 1170 Hancock Street. The first offer to buy the Property received in April 2012 was from Jay Patel, an individual with an ownership interest in several hotels in Massachusetts and Rhode Island. Patel, who is the President of Dipika, a corporation which owns a Super 8 motel located in Weymouth, Massachusetts, offered $851,000.00 for the Masons' Property. The Masons rejected the offer.

That same month, the Masons received a second offer to buy the Property from Grossman Munroe Trust, through its real estate manager Leo Martin. The Trust made an offer of $1,500,000.00, which the Masons accepted. The Trust and the Masons agreed that the Temple

would be converted into two condominium units. The Trust would acquire Unit 1 which would consist of the top two floors while Unit 2, the basement, would belong to the Masons. In lieu of the $1,500,000.00 payment for the Property, the Trust agreed that it would undertake to perform the construction work on the Property necessary to convert Unit 2 into a meeting space for the Masons. In September 2012, the parties entered into both a purchase and sale agreement ("P&S") and a Construction Agreement embodying those terms with Ellen Rae Marcus executing the documents as trustee of the Grossman Munroe Trust.

The terms of the P&S required the Trust to complete all construction in a good and workmanlike manner, and attached to the Construction Agreement was a rider containing terms which further specified the Trust's obligations. Section Twelve of the Construction Agreement stated that the Trust was required to secure liability insurance during the period of construction and was to add the Masons as an additional insured on that policy. The Trust also agreed to maintain property damage insurance in case of fire at the site, and it agreed to provide a copy of all insurance policies to the Masons within a reasonable time after construction had begun. The P & S and Construction Agreements both contained non-assignment clauses which stated that the Trust could not assign either agreement without the prior written consent of the Masons. Those clauses provided that a violation of the non-assignment provision was to be considered a default by the Trust allowing the Masons to terminate both agreements.

After the execution of the P&S and Construction Agreement, the Trust undertook demolition work at the premises. At some point, the Trust determined that it was not economically feasible to develop residential units on the Property as it originally had planned. The Trust subsequently executed an agreement to assign the P&S and the Construction

Agreement to Patel on April 19, 2013 in exchange for his payment of $100,000.00 ("Assignment"). Patel intended to construct a boutique hotel on the Property under ownership of Dipika. The Masons, however, were never told of the Assignment to Patel. The Masons' understanding was that Patel was the contractor on the construction work the Trust was to undertake pursuant to its agreement with the Masons..

From fall 2013 until April 2013, significant demolition work had been done on the Property. After the Assignment to Patel, demolition work was continuing with only two workers, Michael Sheehan and Taylor Goulding, on site, both of whom had been hired by Martin.

In July 2013, while demolition on the construction project at the Temple was ongoing, David Levin, who was representing the Masons, asked the Trust to provide some evidence of insurance before continuing the work. Martin conveyed that message to Patel. On July 25, 2013, Patel telephoned his insurance broker, Roblin Insurance Inc. ("Roblin") which had secured for him earlier a commercial liability insurance policy with Union Insurance Company ("Union") for Dipika's Super 8 motel in Weymouth. Patel was not able to reach Roblin's staff, but left a brief voicemail stating: "I need to do a loss payee name of Quincy Masonic Temple Association and this is something I need right away." See Docket #69, Exh. 4 at 22-223. Patel then sent an email to Roblin's claims manager, in which he stated, "I need a ryder (sic) for dipika inc name quincy masonic temple association loss payee." See Docket #66.7 at Exh. III.[1]

Later that day, Joanne Hogan who works for Roblin, without speaking to either Patel or

[1] It is undisputed that Patel's only communication with Roblin which related at all to the Masons was the voicemail and email he left on July 25, 2013. See Paper 68.3, Responses 34B.

Union, issued a Certificate of Liability Insurance ("Certificate") to Patel.[2] The Certificate stated at the top in all capital letters:

> This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurers, authorized representative or producer, and the certificate holder.

The Certificate listed the insured as "Dipika Inc. dba Super 8, Jay Patel, 655 Washington Street, Weymouth, MA 02188," the Certificate holder was listed as "Quincy Masonic Temple Associates, 1170 Hancock Street, Quincy, MA," and the type of insurance was "commercial general liability." See Docket #66.7 at Exh. EEE. Peter Roblin, the principal of Roblin, signed the certificate as the authorized representative. The following day, Lauren Luke, the Account Manager at Roblin, followed up by sending an email to Patel inquiring about the relationship between the Masons and Dipika and whether the Masons were asking for a certificate. Patel never responded to Roblin's request for information.

Upon receiving the insurance Certificate, Patel provided a copy to David Elsner, the Masons' President. Elsner read only "the salient points" and then called Martin and told him he could proceed with the work. See Depo. of David Elsner, Vol. 1 at 131.

On September 30, 2013, a fire occurred at the Property while Sheehan and Goulding were working, which causing severe damage to the Temple. After the fire, the Masons made a property damage claim to their property insurer, Great American Insurance Company ("Great

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[2] The insurer listed on the Certificate was Acadia Insurance Company. Acadia and Union are related, member companies of the same corporation. Acadia underwrites the coverage and adjusts the claims under Union policies and therefore, Union is commonly referred to as Acadia. For the purposes of this motion, the Court refers to Acadia as Union.

American") in the amount of $12,239,329.27.

On October 1, 2013, Great American sent Patel/Dipika a letter stating that it intended to hold Dipika responsible for the fire damage because it was caused by contractors performing work on Dipika's behalf. Great American faxed a copy of the letter to Union. In response, Union sent letters to Patel's attorney and to Great American stating that Dipika's insurance policy with Union provided property and liability insurance to Dipika for the Weymouth Super 8 motel only and did not cover any claim arising out of the fire that had damaged the Temple. The letter to Patel also asked for confirmation that he understood that Union's policy covering Dipika and the Super 8 did not extend to the Temple. Patel's counsel responded by letter on October 25, 2013, stating that Patel was aware that the policy issued by Union was only for the Super 8 located in Weymouth. Union then sent another letter to confirm that Patel was not seeking insurance coverage from Union for any claims arising out of the fire at the Temple.

On September 29, 2016, the Masons filed the instant action against Patel and Dipika. Thereafter, Patel and Dipika and the Masons filed claims against Roblin and Union.

Ruling

The Masons' complaint asserts claims for misrepresentation and negligence against Roblin. It asserts the same claims against Union as Roblin's principal as well as violation of G. L. c. 93A. The Masons also seek a declaratory judgment that Union's disclaimer of insurance coverage is invalid and that the Masons' are covered under Union's insurance policy.[3] Patel and

[3] The Masons also brought claims against certain real estate entities associated with the Trust, Treace Ltd, Quincy Adams Building Corp. and Shea Street Realty Trust. The Masons settled their claims against Patel and Dipika and against those allied real estate entities prior to the hearing on the motions for summary judgment.

Dipika have brought claims against Roblin and Union for indemnification and contribution, breach of contract, negligence, and violation of G. L. c. 93A, and seek a declaratory judgment that the Masons' Property was covered by Dipika's insurance policy with Union and that Union has a duty to defend and indemnify Patel/Dipika.

Before the Court are four motions for summary judgment: (1) Roblin Insurance Inc.'s Motion for Summary Judgment against the Masons; (2) Roblin Insurance Inc.'s Motion for Summary Judgment against Patel and Dipika; (3) Union Insurance's Motion for Summary Judgment against Patel and Dipika; and (4) Union Insurance's Motion for Summary Judgment against the Masons. The Court considers each motion in turn.

I. Roblin Insurance Inc.'s Motion for Summary Judgment against the Masons

The Masons bring claims for negligence and misrepresentation against Roblin based on Roblin's issuance of the Certificate of Insurance in response to Patel's request to add the Masons as a loss payee to Dipika's existing insurance policy. Neither of these claims can be sustained as a matter of law.

Examining the negligence claim, because the Masons themselves had no relationship or communication with Roblin, to establish that Roblin owed them a duty of care, the Masons must put forward evidence that it was foreseeable to Roblin that the Masons would rely on Roblin performing its broker services for Patel in accordance with the standard of care.[4] See *Flattery* v. *Gregory*, 397 Mass. 143, 147 (1986) ("We have never held that in the absence of foreseeable

[4] The Masons argue that an affidavit submitted by their expert, Frank Licata, established that Roblin's action fell below the standard of care of an ordinary broker. Even if that were true, however, the Masons' claim still would fail in the absence of the existence of a duty to the Masons, as a third-party.

reliance on the promised services being performed by someone, a promisor of services may be liable in tort not only to the promisee but also to potential beneficiaries of the promise."). There is, however, no evidence in the record which establishes Roblin's knowledge either that Patel/Dipika was responsible for construction on the Masons' Property or that a contract existed which required Patel to obtain insurance coverage to protect the Masons' interest at a location in Quincy. See *Quigley* v. *Bay State Graphics, Inc.*, 427 Mass. 455, 460-461 (1998). Patel never discussed with Roblin his arrangement with the Trust nor did he share information relating at all to his obligations under the Assignment or Construction Agreement. While the Masons contend that the voicemail and email Patel sent to Roblin put the agency on notice that the Masons would use the Certificate "as proof that [Patel] had obtained insurance for what it was doing for the Masons," see Paper #81 at 15-16, such notice is insufficient to establish liability. Without evidence of actual knowledge on the part of Roblin, the Masons are unable to establish that Roblin owed them a legally cognizable duty of care to act as a reasonably prudent broker and, therefore, their negligence claim cannot be sustained. See *id.* at 462; *Wilson* v. *James L. Cooney Ins. Agency*, 66 Mass. App. Ct. 156, 165-166 (2006) (third-party had no reasonable reliance on coverage where there was no evidence that broker knew third-party was relying on coverage).[5]

The misrepresentation claim also fails because a reasonable fact finder could not conclude that the Certificate misled the Masons into believing that Patel had procured the proper

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[5] To the extent that the Masons rely on *Flattery* v. *Gregory* to support their assertion of foreseeable reliance for their negligence claim, that case is readily distinguishable from the present case. In *Flattery*, the Court held that the third-parties were intended beneficiaries of an automobile policy because the policy language expressed a specific intention for third-parties to benefit under the contract. See *id.* at 150-151. Here, there is no similar language in the policy which expressed such an intention.

insurance coverage. To support their claim for misrepresentation, the Masons must establish, among other things, that the Certificate provided by Roblin contained a false statement of fact. See *Zimmerman* v. *Kent*, 31 Mass. App. Ct. 72, 77 (1991). The face of the Certificate, however, only identifies it as proof of a commercial general liability policy for the insured "Dipika Inc. dba Super 8, Jay Patel, 655 Washington Street, Weymouth, MA 02188," and it contains no reference to the Masons as additional insureds. The Certificate is, therefore, accurate rather than misleading. See *Quigley*, 427 Mass. at 462 (accurate insurance certificate could not support a misrepresentation claim); *Vargas* v. *Sylvia & Co. Ins. Agency, Inc.*, 69 Mass. App. Ct. 1105, 2007 WL 1544401, at *1 (2007) (unpublished Rule 1:28) (no misrepresentation claim where insurance certificate only listed accurate information concerning policy).[6]

Even if the Certificate in this case could be viewed as misleading, the Masons' claim for misrepresentation still would fail since there is no evidence to show that their reliance on the Certificate was "reasonable and justified." See *Collins* v. *Huculak*, 57 Mass. App. Ct. 387, 391

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[6] Relying on *Witkowski* v. *Richard W. Endlar Ins. Agency, Inc.*, 81 Mass. App. Ct. 785 (2012), the Masons contend that even if the Certificate is technically accurate, summary judgment should be denied because a genuine dispute exists as to whether in light of the context in which it was issued, the Certificate, nonetheless, was misleading. The facts in *Witkowski*, however, are readily distinguishable from those in the present case. In *Witkowski*, the plaintiff specifically communicated with the insurer that he needed a certificate verifying flood insurance coverage on his condominium unit and the insurer furnished a certificate stating that the plaintiff was insured under the master policies listed to the condominium building, which did include flood insurance coverage. While the certificate was technically correct in that the unit was covered by the master policies, it did not reveal that the unit was specifically excluded from flood coverage under those policies. *Id.* at 789. The Appeals Court held that when considered in the context of the circumstances it was issued, the certificate could fairly be read to assert that the plaintiff's unit had flood coverage and was therefore misleading. *Id.* Unlike the plaintiff in *Witkowski*, the Masons never specifically asked Roblin for proof that the Temple had insurance coverage during construction, and the Certificate furnished by Roblin contained no information which would fairly lead to that conclusion.

(2003). The Certificate issued contained a clear disclaimer stating that it conferred no rights upon the certificate holder and did not alter the coverage afforded by the commercial liability policy on the Super 8 motel. The existence of such a disclaimer coupled with the clear language printed on the Certificate noting that it pertained only to the Super 8 motel in Weymouth, precludes any reasonable reliance on the Masons' part that an insurance policy was procured which covered the Temple in Quincy during construction. See *Vargas*, *supra* at *2; *Albor Corp.* v. *Thomas St. Jean Ins.*, 2009 WL 2995899 (Mass. Super. Ct. June 16, 2009); Cf. *Cole* v. *New England Mut. Life Ins. Co.*, 49 Mass. App. Ct. 296, 299-300 (2000) (dispute of fact precluding summary judgment existed regarding whether plaintiff justifiably relied on insurer's statement that coverage conformed with illustration where illustration listed the incorrect age of the plaintiff and the policy was based on the correct age).

Accordingly, Roblin is entitled to summary judgment on the Masons' negligence and misrepresentation claims.[7]

II. Roblin Insurance Inc.'s Motion for Summary Judgment against Patel and Dipika

Patel and Dipika assert claims against Roblin for indemnification and contribution, breach of contract, negligence, and violation of G. L. c. 93A based on Roblin's alleged failure to have procured builder's risk insurance covering the construction work being performed at the

[7] Because there is no evidence to support the Masons' claims against Roblin, the Court does not reach Roblin's additional arguments for summary judgment regarding the Great American Release and the monies already received by the Masons from its insurer as a result of the fire.

Temple.[8] Alternatively, Patel and Dipika assert that Roblin's failure to have followed up with Patel and its action of issuing a Certificate which gave the appearance of coverage also support their claims. The Court concludes that there is insufficient evidence in the record to support Patel and Dipika's claims against Roblin.

It is well-established that an insurance broker may be liable in tort and contract to a potential insured if the broker fails to procure the insurance coverage requested. See *Rae* v. *Air-Speed, Inc.*, 386 Mass. 187, 192 (1982). However, to the extent that Patel and Dipika premise their tort, contract, and c. 93A claims on Roblin's failure to have procured builder's risk coverage on the Masons' Property, their claims must fail since the record is devoid of any facts suggesting that Patel had ever requested such coverage. It is undisputed that the sole information that Patel conveyed to Roblin regarding his relationship with the Masons was in a voicemail stating that he needed "to do a loss payee name of Quincy Masonic Temple Association" and in an email stating he needed a "rider for Dipika" with the name Quincy Masonic Temple Association as the loss payee.[9] There is no evidence that Roblin was aware that Patel was responsible for construction at the Temple or that he had agreed to procure insurance covering

[8] Because Patel/Dipika did not own the Property during construction and Patel was acting in the role of a contractor, builder's risk insurance would have provided the appropriate coverage for the Property during construction. "Builder's risk insurance typically indemnifies builders or contractors against the loss of, or damage to, a building under construction." *Lodge Corp.* v. *Assurance Co. of Am.*, 56 Mass. App. Ct. 195, 195 n.1 (2002), citing 1 Couch, Insurance § 1:53, at 1–77 (3d ed.1998).

[9] It is undisputed that because a loss payee is typically a bank, mortgagee, or a lienholder who have an insurable interest in the insured property, a request by Patel to add someone to a general liability policy as a loss payee did not make sense. Further, "a rider," if intended to mean endorsement to add coverage, could only be issued by Union, but not by Roblin. See Depo of Laura Luke, Vol. 1 at 35-36.

the Property as construction was proceeding as required in the Assignment. Cf. *Capital Site Mgmt. Assocs.* v. *Inland Underwriters Ins. Agency, Ltd.*, 61 Mass. App. Ct. 14, 17 (2004) (insured had claim for breach of contract against insurer who failed to ascertain whether properties scheduled for coverage were vacant at time of policy renewal). Accordingly, Roblin cannot be liable for failing to have procured requested coverage.[10]

To the extent that Patel and Dipika premise their claims on Roblin's failure to have cleared up any confusion and to have taken further steps to ascertain Patel's insurance needs, their claims fail because they have not shown Roblin was under any obligation to do so. Contrary to Patel and Dipika's assertions, Roblin did not have a duty to decipher Patel's insurance needs without its having actual knowledge of his undertakings at the Property. Roblin's duty extended only to carrying out the instructions of Patel which, no party disputes, did not include a specific request for builder's risk insurance. See *Bicknell, Inc.* v. *Havlin*, 9 Mass. App. Ct. 497, 500 (1980) (ordinary duty of a broker is to use due care in implementation of agency and carrying out instructions of insured); see also *Martinonis v. Utica Natl. Ins. Group,* 65 Mass. App. Ct. 418, 420–421 (2006) ("There is no general duty of an insurance agent to ensure that the insurance policies procured by him provide coverage that is adequate for the needs of the insured[,] ... [and][t]he agent does not, in general, have a fiduciary duty to the

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[10] As support for their claim, Patel and Dipika point to the deposition testimony of Laura Luke, an Account Manager at Roblin, who was forwarded the email from Patel requesting the rider with the Masons named as a loss payee. Luke testified at her deposition that she was confused by Patel's request to name the Masons as a loss payee and she assumed that when Patel used the word "rider" that he had meant a certificate. See Depo. of Laura Luke, Vol. 1 at 36-37, 46-47. Her testimony, however, did not show that Roblin was aware of Patel's undertaking as a contractor on the Masons' Property or of his obligation to procure insurance to cover that Property during the construction.

insured in this regard.").[11]

The Court further notes that it should have been clear to Patel based the terms of the Certificate that his voicemail and email had not resulted in securing the requested insurance coverage for the Masons' Property. See *Campione* v. *Wilson*, 422 Mass. 185, 196 (1996) ("Although an insured is entitled to rely on his broker as his agent, an insured cannot abandon all responsibility for ascertaining the terms of the coverage his broker obtained."). The Certificate here clearly listed "Dipika Inc. dba Super 8, Jay Patel, 655 Washington Street, Weymouth, MA 02188" as the only insured and contained a disclaimer noting that it created no rights in the certificate holder. Accordingly, issuing the Certificate did no more than confirm the existence of a policy covering the Super 8. Therefore, it could not reasonably have induced Patel to have believed that there was coverage on the Masons' Property. Cf. *Witkowski, supra; O'Connell* v. *Reliance Ins. Co.*, 50 Mass. App. Ct. 334, 335 (2000) (insurer liable for furnishing of certificate which failed to mention deductible which negated required coverage). Accordingly, summary judgment is warranted on Patel and Dipika's claims against Roblin.

III. Union Insurance's Motion for Summary Judgment against Patel and Dipika

Patel and Dipika assert claims for indemnification/contribution, breach of contract, negligence, and violation of G. L. c. 93A against Union based on Union's failure to provide insurance coverage for the fire. They also seek a declaratory judgment that Union is required to

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[11] In their memorandum in support of opposition to Roblin's motion, Patel and Dipika rely on *Martinonis*, 65 Mass. App. Ct. at 421 and *Bicknell*, 9 Mass. App. Ct. at 501, to contend that Roblin's actions fell below the standard of care of a broker. These cases are distinguishable in that there the insured showed "special circumstances" that gave rise to a heightened duty of care on the part of the agent to ensure adequate insurance had been obtained. Patel and Dipika have not argued, nor is there evidence suggesting, that such special circumstances existed here.

defend and indemnify them under the Policy. After reviewing the language in the property and commercial general liability policy insuring Dipika d/b/a Super 8 ("the Policy") and applicable case law, the Court concludes that summary judgment is warranted in Union's favor.

As discussed herein, the evidence in the record demonstrates that Patel did not request the required builder's risk coverage when he contacted Roblin. Nor did the Certificate issued by Roblin state that the Masons were insureds under the Policy or that the Certificate conferred any rights in the holder. Thus, there is no basis to conclude that Roblin's action of producing a Certificate requires Union to cover the damage to the Property. See *Commonwealth* v. *Gall*, 58 Mass. App. Ct. 278, 289 (2003) ("Confirmatory certificates . . . typically contain disclaimer language to dispel any suggestion that they confer any rights upon the certificate holder, and they are widely considered *not* to be a part of the insurance contract.") (emphasis in the original).

Turning to the Policy itself, whether the language in the Policy which covered Dipika d/b/a Super 8 also covered the Masons' Property in Quincy presents a question of law for the court. See *McNeill* v. *Metropolitan Property Liability Insurance Co.,* 420 Mass. 587, 589 (1995). The policy should be construed "to give it effect as a rational business instrument and in a manner that will carry out the intent of the parties." *Lewis* v. *Chase,* 23 Mass. App. Ct. 673, 677, 505 (1987). Unambiguous words in an insurance policy must be interpreted in their usual and ordinary sense. *Bagley* v. *Monticello Ins. Co.,* 430 Mass. 454, 457 (1999). A term is ambiguous only if it is susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one. *Lumbermens Mut. Casualty Co.* v. *Offices Unlimited, Inc.,* 419 Mass. 462, 466 (1995). An ambiguity is not created simply because a controversy exists between the parties. *Id.*

The Policy contains a declarations page that lists the insured as "Dipika Inc. dba Super 8," its address as 655 Washington Street in Weymouth, and its business description as "Motel." See Paper 66.7 at ACA000012. It also contains a Location Schedule which lists only the Weymouth address. The Policy consists of two coverage parts: The Commercial Property Coverage Part and the Commercial General Liability Coverage Part. Each part contains several endorsements. Patel and Dipika claim that certain endorsements contain language which would reasonably lead to the conclusion that the Property was covered during construction. The Court disagrees.

With respect to the Commercial Property Coverage Part, Patel contends that the "Hospitality Expanded Coverage Endorsement" which contains a provision for "Newly Acquired or Constructed Property" extends coverage to the Masons' Property. The provision states that insurance coverage of the buildings may be extended to apply to a "Building you acquire at locations, other than the described premises, intended for: (i) Similar use as the building described in the Declarations." See Paper 66.7 at ACA000029. Patel argues that because he held an Assignment of the purchase and sale agreement for the Masons' building (the Temple) and intended ultimately to turn his prospective unit into a boutique hotel which would be owned by Dipika, it was covered by this provision. Dipika (the insured), however, did not *acquire* the Temple or otherwise hold an ownership interest in the Property at the time of the fire. The provision, therefore, clearly does not extend coverage to the Masons' Property.[12]

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[12] Patel also cites language in the "Loss Payable Provisions" endorsement as extending coverage to the Property. This endorsement, which contains a schedule of one loss payee (the mortgage holder on the Super 8 property) states: "The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property." This argument overlooks the fact that at the time of the fire, the Masons'

Patel/Dipika fare no better under the Commercial General Liability ("CGL") Part of the Policy. They contend that two endorsements to the CGL policy, the Designated Construction Project(s) General Aggregate Limit endorsement and the Designated Location(s) General Aggregate Limit endorsement, contemplate coverage for the construction work undertaken at the Masons' Property. This contention fails to acknowledge that the CGL part of the Policy covers only Dipika *doing business as Super 8* as the insured from liability for losses arising out of the operation of Dipika operating the Super 8 motel. See *Monticello Ins. Co.* v. *Dion*, 65 Mass. App. Ct. 46, 47 (2005), citing 9 Couch, Insurance § 129.2 (3d ed.1997) ("Commercial general liability policies are, in general, intended to protect an insured employer against liability for losses to third parties arising out of the operation of the insured's business."). Although no Massachusetts courts have opined on the issue, several courts in other jurisdictions have held that where an insurance policy identifies a named insured as "doing business" under another name, coverage is limited to business done under that listed designation and does not extend to other businesses that may be operated by the insured. See *Fidelity & Deposit Co.* v. *Charter Oak Fire Ins. Co.*, 66 Cal. App. 4th 1080 (Cal. Ct. App. 1998); *Consolidated Am. Co. Ins.* v. *Landry*, 525 So.2d 567 (La. Ct. App. 1988); *Budget Rent-A-Car Sys., Inc.* v. *Shelby Ins. Grp.*, 197 Wis. 2d 663 (Wis. Ct. App. 1995); *Charter Oak Fire Ins. Co. v. Coleman*, 273 F. Supp. 2d 903, 913 (W.D. Ky 2003); see also *Miller* v. *Hehlen*, 104 P.3d 193, 199 (Ariz. Ct. App. 2005). While a few other courts have taken a contrary position, see *Providence Washington Ins. Co.* v. *Valley Forge Ins. Co.*, 42 Cal. App. 4th 1194 (Cal. Ct. App. 1996); *Hall* v. *Auto-Owners Ins. Co.*, 658 N.W.2d 711, 716

Property was under agreement for sale not with Dipika or Patel but with the Trust.

(Neb. 2003), this Court concludes that the "doing business as" designation in the Policy limits Dipika's coverage only to the operations of the Super 8. Such an interpretation properly gives meaning to all words of the insurance contract. See *Boston Gas Co.* v. *Century Indem. Co.*, 454 Mass. 337, 355 (2009) (every word in an insurance contract is presumed to have a purpose and must be given meaning). To hold otherwise would mean that any new business endeavors undertaken by Dipika or by its principal Patel at any geographical location which might relate to a hotel or motel would be covered by a Policy which clearly had been taken out to protect the Super 8.[13]

Accordingly, because the Policy did not cover Patel's activities as a contractor on the Masons' Property, the claims for indemnification/contribution, breach of contract, negligence, violation of G. L. c. 93A, and declaratory judgment cannot be supported.[14] Summary judgment is warranted in favor of Union.

IV. Union Insurance's Motion for Summary Judgment against the Masons

The Masons assert claims for negligence, misrepresentation, and violation of G. L. c. 93A against Union and seek a declaratory judgment that the Policy covering Dipika also covered the

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[13] Moreover, the Court notes that it was Patel, not Dipika, that held the Assignment and undertook responsibility for construction on the Property as the contractor. Patel listed himself, not Dipika as the owner of the Property on the building permit, and the Masons were unaware that Dipika was involved in the construction in any way. If the Court were to follow Patel/Dipika's interpretation of the Policy, any endeavor undertaken by Patel because of his status as Dipika's sole officer would also be covered merely because he asserts that he was acting on behalf of Dipika and that he intended that Dipika would be assuming ownership of the Property at some point in the future.

[14] To the extent that any of Patel/Dipika's claims against Union are premised on vicarious liability for the actions of Roblin, as discussed herein, because there is no evidence that Roblin was negligent, no claim against Union based on Roblin's negligence can be sustained.

Temple. The claims for negligence and misrepresentation are based on Union's vicarious liability for the actions of its purported agent, Roblin. Because as discussed herein in Section I, the claims for negligence and misrepresentation cannot be sustained against Roblin, the same claims cannot be maintained against Union as Roblin's principal. See *Dias* v. *Brigham Medical Assoc., Inc.*, 438 Mass. 317, 319-320 (2002) (a principal's vicarious liability is based on the torts of its agent).[15]

The Masons' c. 93A claim against Union is premised on Union's refusal to provide coverage for the fire damage to the Masons' Property. The Masons claim that Union acted unfairly and deceptively by misrepresenting Dipika's insurance policy provisions and denying coverage. As discussed herein in Section III, Union has not taken an incorrect position as to coverage and, therefore, is not subject to c. 93A liability for denying coverage. For that reason, summary judgment is warranted on the Masons' c. 93A claim.

Finally, the Masons seek a declaratory judgment that Union's disclaimer of coverage is improper and that the Policy covers the Masons' loss.[16] As discussed *supra*, the Policy language demonstrated that the disclaimer of coverage was correct and the Masons' loss was not covered by the Policy which insured Dipika d/b/a Super 8.[17] Accordingly, summary judgment is

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[15] The Court does not reach Union's argument that Roblin was not acting as its agent at the time it issued the Certificate.

[16] There is no merit to Union's contention that the Masons have no standing to seek a declaratory judgment claim against them. See *Dorchester Mut. Ins. Co.* v. *Legeyt*, 25 Mass. L. Rptr. 262, 2008 WL 5784218, at *6 (Mass. Super. Ct. Dec. 30, 2008) (Garsh, J.) (concluding that a third-party had a valid interest in a policy which insured another and, therefore, was entitled to assert a declaratory judgment claim against an insurer).

[17] Asserting the same arguments as Patel and Dipika, the Masons contend that the Policy extended to premises and operations beyond the Super 8 because it lacked limiting language.

warranted on the Masons' declaratory judgment claim.

Order

For the foregoing reasons, it is hereby **ORDERED** that Roblin Insurance Inc.'s Motion for Summary Judgment against the Masons (paper no. 68.7) is **ALLOWED**. Roblin Insurance Inc.'s Motion for Summary Judgment against Patel and Dipika (paper no. 68) is also **ALLOWED**.

With regard to Union Insurance's Motion for Summary Judgment against Patel and Dipika (paper no. 66), it is **ORDERED** that said motion is **ALLOWED**; and the Court hereby **DECLARES** that under Dipika's insurance policy procured through Union, the fire at the Masonic Temple was not a loss covered by Union, and Union has no duty to indemnify and defend Patel and Dipika.

It is further **ORDERED** that Union Insurance's Motion for Summary Judgment against the Masons (paper no. 67) is **ALLOWED**; and the Court hereby **DECLARES** that Union's disclaimer of coverage is valid and Dipika's Commercial General Liability policy issued by Union does not cover the Masons' loss.

August 15, 2019

Thomas A. Connors
Justice of the Superior Court

Like Patel and Dipika, the Masons ignore that declarations explicitly made clear that the insured was Dipika d/b/a Super 8. Had Dipika been performing operations of the Super 8 off the Weymouth location, the activities arguably might have been covered by the GCL Part of the Policy. However, Patel's undertaking work as the contractor at a construction project was unrelated to Dipika's operation of the Super 8 and, therefore, was not covered.