

Tom, J.P., Renwick, Moskowitz, Manzanet-Daniels, Feinman, JJ.

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15500 Courtney Dupree,
Plaintiff,

Rodney Watts,
Plaintiff-Appellant,

-against-

Scottsdale Insurance Company,
Defendant-Respondent.

Thompson & Knight LLP, New York (Marion Bachrach of counsel), and
Ronald E. DePetris, Southhampton, for appellant.

Skarzynski Black LLC, New York (Alexis J. Rogoski of counsel),
for respondent.

Order, Supreme Court, New York County (Shirley Werner
Kornreich, J.), entered September 10, 2014, which, inter alia,
granted defendant's motion to vacate the court's prior order
entered June 28, 2012, declared that defendant was no longer
required to pay for plaintiff Rodney Watt's defense in the
criminal action and directed Watts to reimburse defendant for the
monies it expended in his defense in accordance with the terms of
the policy, and denied Watt's motion to compel defendant to pay
for his incurred legal fees retroactively, unanimously affirmed,
with costs.

Plaintiff Watts was the chief investment officer of GDC Acquisitions, LLC. Defendant Scottsdale Insurance Company issued GDC a directors & officers policy that covered Watts. On August 13, 2010, Watts was indicted for conspiracy to commit bank fraud, bank fraud, and making false statements (*U.S. v Courtney Dupree, Thomas Foley and Rodney Watts*, Case No. 1:10-CR-627 [KAM] [ED NY]). On June 28, 2012, the IAS court issued a preliminary injunction directing defendant to pay for Watt's defense in the criminal action. Following Watt's conviction and sentencing, defendant sought to be relieved of its obligation to pay for his continued defense, particularly, the appeal from his conviction that he was already pursuing. Defendant argued that the policy contained an exclusion for coverage of acts of fraud that became operable upon a "final judgment against its insured." The IAS court agreed with defendant, and vacated the preliminary injunction. We affirm.

In the context of a criminal prosecution, it is well settled that the imposition of the sentence constitutes the final judgment against the accused (see e.g. Criminal Procedure Law § 1.20[15]). While the appeal may, at some point, relieve Watts of that judgment, the finality of it is not changed by the pendency

of the appeal (see *Matter of Bailey [Bush Term. Co.]*, 265 AD 758 [1st Dept 1943], *affd* 291 NY 534 [1943]).

The language of the exclusion here is clear. Once the final judgment for fraud was entered against Watts, defendants' obligation to defend him from those claims ceased (see e.g. *30W. 15th St. Owners Corp. v Travelers Ins. Co.*, 165 AD2d 731, 733 [1st Dept 1990]).

The court also correctly concluded that, at the time of its order, its finding that plaintiff was excluded from receiving further coverage for his defense under the policy and was then obligated to reimburse defendant for the monies it had expended would also entitle it to an offset on plaintiff's claim for past legal fees.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 23, 2015

A handwritten signature in black ink, appearing to read 'Susan R. [unclear]', written over a horizontal line.

CLERK