

Colony Ins. Co. v Danica Group, LLC

2012 NY Slip Op 31996(U)

July 16, 2012

Supreme Court, New York County

Docket Number: 116200/2010

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

COLONY INSURANCE COMPANY,

INDEX No. 116200/12¹⁶

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 001

DANICA GROUP, LLC,

Defendant.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits - Exhibits....

FILED

Answering Affidavits- Exhibits _____

JUL 27 2012

Replying Affidavits _____

CROSS-MOTION: _____ YES NO

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that the motion is hereby decided in accordance with the attached memorandum decision.

Dated: 7/16/12

Donna M. Mills
J.S.C.
DONNA M. MILLS, J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

----- X
COLONY INSURANCE COMPANY

Index No. 116200/2010

Plaintiff,

- against -

DECISION AND ORDER

FILED

DANICA GROUP, LLC,

Defendant.

----- X

JUL 27 2012

DONNA M. MILLS, J.S.C.:

NEW YORK
CLERK'S OFFICE

Plaintiff Colony Insurance Company (Colony) moves, pursuant to CPLR 3215 (a), for an order entering a default judgment against defendant Danica Group, LLC (Danica) for the declaratory relief sought in the complaint. The complaint seeks a judgment declaring that five commercial general liability insurance policies (the Colony policies) issued by Colony to Danica have been properly rescinded by Colony on the ground of material misrepresentations made in the applications, and that the policies are null and void and of no effect.

Nonparties Zurich American Insurance Company (Zurich), and Pav-Lak Industries, Inc. (Pav-Lak) move, pursuant to CPLR 1012 and 1013, to intervene in this action, and for a 30-day stay pending joinder. I granted the stay. The motion to intervene is granted. The stay is continued until further order of this court.

Colony issued three primary insurance policies to Danica,

covering one-year periods ending, respectively, on July 19, 2007, July 19, 2008, and July 19, 2009. Colony also issued two excess policies to Danica, covering the one-year periods ending, respectively, July 19, 2008 and July 19, 2009.

Proposed intervenor Pav-Lak is the construction manager on projects at four separate sites, pursuant to contracts with the owners of those sites. Four personal injury actions (the personal injury actions) are pending for injuries allegedly sustained at each of these four sites against Pav-Lak and others. Pav-Lak agreed in its contracts as construction manager to indemnify and hold harmless the owners from claims arising out of the projects, and to procure general comprehensive liability insurance, naming the owners as additional insureds. Pav-Lak also entered into contracts with Danica to perform work on each of the four construction projects. Pav-Lak alleges that it is an additional insured under the Colony policies.

Pav-Lak obtained one-year policies from Zurich, that were annually renewed, covering the period from August 29, 2005 through August 29, 2011. Zurich has been defending these actions on behalf of Pav-Lak and other defendants that were either named as additional insureds, or entitled to a defense contractually through Zurich's Contractor Controlled Insurance Program.

Colony has allegedly refused to acknowledge its coverage obligations to Pav-Lak as an additional insured, despite tender.

Pav-Lak alleges that it is preparing to file a declaratory judgment action against Colony, seeking to establish that Colony is under a duty to defend and indemnify Pav-Lak in connection with each of the four personal injury actions. One such action has already been filed.

In support of their motion to intervene, Zurich and Pav-Lak submit a proposed answer and counterclaims. The first counterclaim seeks a judgment declaring that the Colony policies issued to Danica were in full force and effect at the time of the alleged personal injuries at the four sites, that the Colony policies provide coverage to the proposed intervenors as additional insureds, and that Colony is obligated to defend and indemnify the intervenors in the four underlying actions. The first counterclaim presents questions of law and fact that are in common with those presented by the verified complaint in this action (see CPLR 1013).

CPLR 1013 provides, as pertinent:

Upon timely motion, any person may be permitted to intervene in any action when ... the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

There is no merit to Colony's argument that this motion is not timely. Nor is there any basis to hold that permitting intervention "will unduly delay this action or prejudice the

rights of any party" (*id.*).

Colony's motion to enter a default judgment is held in abeyance until further order of this court, in order to enable the intervenors to submit their opposition to Colony's motion.

Accordingly, it is

ORDERED that the motion of plaintiff Colony Insurance Company for an order entering a default judgment pursuant to CPLR 3215 (a) against defendant Danica Group, LLC, for the declaratory relief sought in the complaint, is denied, without prejudice to renewal, after joinder of the intervening defendants; and it is further

ORDERED that the motion of proposed intervening defendants Zurich American Insurance Company and Pav-Lak Industries, Inc. to intervene, pursuant to CPLR 1013, is granted, and that Zurich American Insurance Company and Pav-Lak Industries, Inc. be permitted to intervene; and it is further

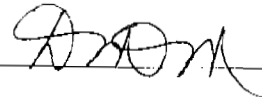
ORDERED that defendant-intervenors Zurich American Insurance Company and Pav-Lak Industries, Inc. serve their answers upon the attorney for the plaintiff Colony Insurance Company and defendant Danica Group, LLC, or move with respect to the complaint in the above-entitled action, within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the attorneys for the intervenors shall serve a copy of this order with notice of entry upon the County Clerk

(Room 141B) and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

Dated: 7/16/12

E N T E R:



J. S. C.

DONNA M. MILLS, J.S.C.

FILED

JUL 27 2012

NEW YORK
COUNTY CLERK'S OFFICE