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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 55

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NARRAGANSETT BAY INSURANCE COMPANY, JOSEPH VITACCO,

Plaintiffs,

DECISION/ORDER
Index No. 154946/2014

-against-

TOWER INSURANCE COMPANY, ISABELLA RODRIGUEZ, MARIAN SCIANDRA RODRIGUEZ

Defendants.

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HON. CYNTHIA KERN, J.:

Defendant CastlePoint Insurance Company, sued herein as Tower Insurance Company ("Tower"), has brought the present motion for summary judgment against plaintiffs and the remaining defendants declaring that it has no obligation to defend or indemnify Joseph Vitacco in the underlying personal injury action entitled *Isabella Rodriguez, by her parent and natural guardian, Marian Sciandra Rodriguez and Marian Sciandra Rodriguez, Individually v. 571 Long Point Drive, LLC and Joseph Vitacco*, pending in the Supreme Court of the State of New York, Richmond County, under Index No.: 101814/2013 (the "Underlying Action"), dismissing the complaint and granting summary judgment in favor of Tower on its first counterclaim against Vitacco. The plaintiff Vitacco and the individual defendants have both brought cross-motions for summary judgment against CastlePoint declaring that CastlePoint is obligated to defend and indemnify Vitacco in the Underlying Action. As will be explained more fully below, the motion by CastlePoint is denied in its entirety and the cross-motions are granted.

In the Underlying Action, the plaintiffs alleged they were injured when two dogs owned by Vitacco attacked them on August 25, 2013 at 571 Long Pont Drive, located in Toms River, New Jersey (the "Toms

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River Premises"). The Toms Rivers Premises is the summer home of Vitacco. It is undisputed that the Toms River Premises is owned by 571 Long Point Drive, LLC, which is a limited liability company that has three shareholders, consisting of the two sons of Vitacco and Vitacco, and that the company has owned these premises since 2009. Vitacco originally purchased the premises in his own name but transferred it to 571 Long Point Drive, LLC through a quitclaim deed.

Tower issued a policy to Vitacco for the premises located at 34 Summit Road, Staten Island, New York (the "Premises") for the one-year period commencing on May 5, 2013 and ending on May 5, 2014 (the "Policy"). The "residence premises" indicated on the Declarations page of the policy of the Policy is the Premises.

The Policy contains the following relevant definitions:

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined
as follows:
* * *
4. "Insured location" means:
a. The "residence premises";
b. The part of other premises, other structures and grounds used by you as a residence and:
(1) Which is shown in the Declarations; or
(2) Which is acquired by you during the policy period for your use as a residence;
c. Any premises used by you in connection with a premises in **4.a.** and **4.b.** above;
d. Any part of a premises:
(1) Not owned by an "insured"; and
(2) Where an "insured" is temporarily residing;
e. Vacant land, other than farm land, owned by or rented to an "insured";
f. Land owned by or rented to an "insured" on which a one or two family dwelling is being built as a residence for an "insured";
g. Individual or family cemetery plots or burial vaults of an "insured"; or
h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

The Policy contains the following exclusion:

SECTION II – EXCLUSIONS
1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to "bodily injury" or "property damage":

e. Arising out of a premises:
(1) Owned by an "insured";
(2) Rented to an "insured"; or
(3) Rented to others by an "insured";
that is not an "insured location";

Pursuant to the foregoing exclusion, there is no coverage under the Policy for bodily injury arising out of a premises owned by an insured that is not an insured location.

Tower argues that it has no obligation to defend or indemnify Vitacco in the Underlying Action based on the foregoing exclusion because Vitacco is the *de facto* owner of the Toms River Premises. In the alternative, Tower argues that it has no obligation to defend or indemnify Vitacco in the Underlying Action based on the foregoing exclusion as an interpretation that this exclusion does not apply can be neither derived from the language of the Policy, reasonably inferred from the intentions of the parties, nor imputed as their reasonable expectations. The plaintiffs and other defendants argue that the foregoing exclusion does not apply because the Toms Rivers Premises is not owned by Vitacco.

In the present case, the court finds that the exclusion in the policy for bodily injury arising out of the premises owned by an insured does not apply as a matter of law because Vitacco is not an owner of the Toms River Premises. CastlePoint has failed to cite any authority for the proposition that there can be a de facto ownership of real property pursuant to New York law (or New Jersey law).[1] To the contrary, it is well settled that "[i]n order to transfer an ownership interest in real property there must be a deed, or other 'conveyance in writing." *Goodell v. Rosetti*, 52 A.D.3d 911, 913 ((3d Dept 2008), quoting General Obligations Law § 5-703 [1]). *See also Wali v. City of New York*, 22 Misc.3d 478 (Sup Ct Kings County 2008). Although it is not necessary that such conveyance be recorded, it is a well-established rule that delivery of the deed with intent to transfer title is required and the absence thereof will render the attempted

[1] Although some of the parties argue that the law of New Jersey should apply to determine whether Vitacco is the de facto owner of the Toms River Premises as it is located in New Jersey, both of the cases cited by the parties rely on Estates, Power and Trust Law in reaching this determination, which is inapplicable in the present action. *See, e.g., In Re Messaros*, 262 A.D.2d 322 (2nd Dept 1990); *In re Parisi*, 111 A.D.3d 941 (2nd Dept 2013). However, even if New Jersey law were to apply, CastlePoint has not provided this Court with any authority to support its argument that Vitacco is a de facto owner of the Toms Rivers Premises under New Jersey law.

transfer of ownership ineffective. *Goodell v. Rosetti,* 52 A.D 3d at 911. Based on this court's finding that the exclusion relied upon by CastlePoint to disclaim coverage is inapplicable as a matter of law, this court finds that the plaintiff Joseph Vitacco and individual defendants are entitled to summary judgment declaring that CastlePoint is required to defend and indemnify Joseph Vitacco in the Underlying Action.

The cases relied upon by CastlePoint to establish that there is a de facto ownership by Vitacco of the real property in New Jersey are inapposite as both of these cases involve boats as opposed to real property, as a result of which General Obligations Law § 5-703 [1]) is inapplicable. *RLI Ins. Co. v. Steely*, 88 A.D.3d 975 (2d Dept. 2011); *Dobson v. Gioia*, 39 A.D.3d 995, 998-99 (3d Dept. 2007).

The alternative argument by CastlePoint that it is entitled to summary judgment because providing coverage to Vitacco under the circumstances of this case does not comport with the reasonable expectations of the parties to the policy is without basis. It is well settled that construction of a written contract is a question of law, appropriately decided by the court on a motion for summary judgment, as long as the contract is unambiguous and the intent of the parties can be determined from the face of the agreement. *Mallad Constr. Corp. v. County Fed. Sav. & Loan Assn.*, 32 N.Y.2d 285, 291 (1973). However, "[r]esolution by a fact finder is required where...interpretation of a contract term is susceptible to varying reasonable interpretations and intent must be gleaned from disputed evidence or from inferences outside the written words." *Time Warner Entertainment Co. v. Brustowsky*, 221 A.D.2d 268 (1st Dept 1995).

In the present case, the provision in the insurance policy regarding exclusions for premises owned by the insured is unambiguous as a result of which the intent of the parties can be determined from the face of the agreement, without reference to any inferences outside the written words.

Finally, the court need not address the arguments made by the parties regarding piercing the corporate veil as the doctrine is inapplicable in the present circumstances. Under New York law, "the party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene." *Morris v. NYC Dept. of Taxation and Finance,* 82 N.Y.2d 135 (1993). In the present case, it is undisputed that Vitacco did not form the limited liability company to own the

premises to perpetrate any wrong or injustice against the insurance company CastlePoint so that an exclusion in the policy would be inapplicable. Thus, there is no reason for a court in equity to intervene. To the extent New Jersey law applies to the issue of whether a New Jersey corporation should have its veil pieced, its law is the same as New York. *See State Dept. of Environmental Protection v. Ventron Corp.*, 94 N.J. 473, 500-01 (1983).

Based on the foregoing, the motion by CastlePoint for summary judgment and other relief is denied and the cross-motions by Vitacco and the individual defendants for summary judgment declaring that CastlePoint is required to defend and indemnify Vitacco in the underlying action is granted. The foregoing constitutes the decision and order of the court.

DATE : 12/1/16

KERN, CYNTHIA S., JSC

HON. CYNTHIA S. KERN
J.S.C.