Arch Speciality Ins. Co. v RLI Ins. Co.
2018 NY Slip Op 34453(U)
December 19, 2018
Supreme Court, Queens County
Docket Number: Index No. 714076/2017
Judge: Joseph J. Esposito

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Joseph J. Esposito PART 26
Justice

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ARCH SPECIALITY INSURANCE COMPANY,

Plaintiff,

-- against --

RLI INSURANCE COMPANY,

Defendant.

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Index No. 714076/2017

Motion Sequence : 2

Submit Date: 12/10/18

The following papers numbered 48 to 83 were read on this motion by plaintiff for summary judgment, pursuant to CPLR 3212, against defendant, RLI Insurance Company (RLI), seeking a declaration that Arch's insured, Triangle Court, LLC (Triangle Court) "is entitled to additional insurance coverage under the commercial general liability policy issued by RLI to JKT Construction, Inc. (JKT), in connection with an underlying bodily injury action."

	Papers Numbered
Notice of Motion-Affirmations-Affidavit-Exhibits	48-68
Answering Affirmation-Affidavit-Exhibits	69-82
Reply Memorandum of Law	83

Upon the foregoing papers, it is ordered that plaintiff's motion is determined as follows:

Triangle Court leased premises 442-456 Grand Street, Brooklyn, New York from Keap Grand, LLC (Keap). During the term of the lease, Triangle Court hired D&S Iron Works, Inc. (D&S) to perform work at the premises. Triangle Court, as "Owner," contracted with JKT to be "General Contractor" for said project. Said contract required JKT to procure commercial general liability insurance with stated limits. Thereafter, a written "Hold Harmless Agreement" between Triangle Court and JKT further required JKT to name "the Owner" as an additional insured on the policy procured.

D&S was the employer of one Louis A. Portillo, who allegedly was injured while working at the Triangle Court-leased premises on April 9, 2012. Portillo sued Keap, and another party, on July 13, 2012, in Kings County, under Index No. 14340/2012, alleging negligence and violations of the Labor Law. Thereafter, Keap commenced a third-party action against

Triangle Court, seeking common-law and contractual indemnification, contribution, and breach of contract for Triangle Court's alleged failure to procure insurance pursuant to the lease. In May 2013, plaintiff commenced another action arising from the April 9, 2012 accident, this one in Queens County, bearing Index No. 10458/2013, against Triangle Court and JKT, claiming negligence and Labor Law violations. The Kings and Queens actions were consolidated in Queens County, in 2015.

Arch tendered Triangle Court's defense to, and indemnification for, Portillo's claim to JKT in 2012, which tender was denied by RLI. The instant action seeks "a declaration that RLI is obligated to defend and indemnify Triangle Court in the *Portillo* action as an additional insured under the JKT policy." Arch moves for partial summary judgment on the issue of Triangle Court being an additional insured.

JKT obtained a commercial general liability policy with RLI, which stated, in relevant part, that an additional insured is 'the person or organization shown in the Schedule." The subject endorsement's Schedule herein lists only "Owners where required by written contract, signed prior to loss." Movant contends that the "Hold Harmless Agreement" names Triangle Court as "owner" and, therefore, the required JKT-procured policy with RLI makes Triangle Court an additional insured under it. In opposition, RLI contends that it has no duty to defend Triangle Court as an additional insured in the underlying personal injury action, because Triangle Court was not the "owner" of the subject premises on the date of the accident.

The Court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues" (*Lopez v Beltre*, 59 AD3d 683, 685 [2009]; *Santiago v Joyce*, 127 AD3d 954 [2015]). As summary judgment is to be considered the procedural equivalent of a trial, "it must clearly appear that no material and triable issue of fact is presented .... This drastic remedy should not be granted where there is any doubt as to the existence of such issues ... or where the issue is 'arguable'" [citations omitted] (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *see also Rotuba Extruders v.Ceppos*, 46 NY2d 223 [1978]; *Andre v. Pomeroy*, 35 NY2d 361 [1974]; *Stukas v. Streiter*, 83 AD3d 18 [2011]; *Dykeman v. Heht*, 52 AD3d 767 [2008]. Summary judgment "should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Collado v Jiacono*, 126 AD3d 927 [2014]), citing *Scott v Long Is. Power Auth.*, 294 AD2d 348, 348 [2002]; *see Chimbo v Bolivar*, 142 AD3d 944 [2016]; *Bravo v Vargas*, 113 AD3d 579 [2014]).

"[T]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *see Schmitt v Medford Kidney Center*, 121 AD3d 1088 [2014]; *Zapata v Buitriago*, 107 AD3d 977 [2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of a material issue of fact which requires a trial of the action (*Zuckerman v City of New York*, 49

NY2d 557 [1980]). The burden is on the party moving for summary judgment to demonstrate the absence of a material issue of fact. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 [1988]; *Winegrad v. New York Med. Ctr.*, 64 NY2d 851 [1985]).

There is no argument that Triangle Court was not named as an insured on the face of the subject liability policy from RLI to JKT. The "well-understood meaning" of "additional insured" is "an entity enjoying the same protection as the named insured" (*Pecker Iron Works of N. Y. v Traveler's Ins. Co.*, 99 NY2d 391, 393 [2003]). "A party is not entitled to coverage if it is not named as an insured or additional insured on the face of the policy as of the date of the accident for which coverage is sought" (*New York State Thruway Auth. v Ketco, Inc.*, 119 AD3d 659, 661 [2d Dept 2014]). It is for the courts to determine whether a party is an "additional insured" or not, "from the intention of the parties to the policy, as determined from the four corners of the policy itself" (*140 Broadway Prop. v Schindler El. Co.*, 73 AD3d 717, 718 [2d Dept 2010]; *see 77 Water Street, Inc. v JTC Painting & Decorating Corp.*, 148 AD3d 1092 [2d Dept 2017]).

"Principles of contract interpretation apply equally to insurance policies" (*Gilbane Bldg. Co./TDX Cont. Corp. v St. Paul Fire and Mar. Ins. Co.*, 143 AD3d 146, 151 [1st Dept 2016]), and the extent of coverage is controlled by the relevant policy terms (*see Sanabria v American Home Assur. Co.*, 68 NY2d 866 [1986]; *Corbel Constr. Co. v Arch Specialty Ins. Co.*, 160 AD3d 703 [2d Dept 2018]; *Brooklyn View v PRP, LLC*, 159 AD3d 865 [2d Dept 2018]; *Catholic Health Servs. of Long Is., Inc. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 46 AD3d 590 [2d Dept 2007]). In interpreting an insurance policy, the language of the policy, when clear and unambiguous, must be given its plain and ordinary meaning (*see White v Continental Cas. Co.*, 9 NY3d 264 [2007]; *Lissauer v GuideOne Specialty Mut. Ins.*, 161 AD3d 974 [2d Dept 2018]; *Arthur Vincent & Sons. Constr., Inc. v Century Sur. Ins. Co.*, 156 AD3d 853 [2d Dept 2017]; *Conlon v Allstate Veh. & Prop. Ins. Co.*, 152 AD3d 488 [2d Dept 2017]).

When an agreement amounts to a "clear and complete document," a court should not interpret it "so as to render any term, phrase, or provision meaningless or superfluous" (*Mahmood v County of Suffolk*, 2018 NY Slip Op. 07715, *2 [2d Dept 2018]; *see Batales v Friedman*, 144 AD3d 849 [2d Dept 2016]), and such "writing should ... be enforced according to its terms" (*Vermont Teddy Bear Co. v Madison Realty Co.*, 1 NY3d 470, 475 [2004], quoting *W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]). In the case at bar, the term "owner" is clear and unambiguous, and the unmistakable policy language refers to the ordinary meaning of the term, *i.e.*, the legal titleholder of the property. Plaintiff's reliance on *Demartino v CBS Auto Body & Towing*, 208 AD2d 886 (2d Dept 1994), and others of that ilk, for the determination that "the term 'owner' encompasses (any) party with an interest in the property" (at 887), is misplaced. Such declaration, made in that decision with regard to liability under Labor Law §§ 240 and 241, is immediately preceded by the words "within this statutory context," thus removing it from consideration in the instant insurance policy context.

Plaintiff's further argument, that "[t]he title of the endorsement, 'Owners, Lessees or Contractors,' indicates the endorsement applies to each of the aforementioned categories of 'owners', " is equally unavailing. The title of the subject endorsement begins with "Additional Insured," and then lists the three terms mentioned above. The expressive usage of the conjunction "or" denotes different possibilities, as opposed to using the inclusive conjunction "and," which was not employed herein. Clearly, given the choice of including any combination of "owners," "lessees," and "contractors," the drafters of the endorsement herein chose only to apply it to "owners," to the exclusion of the others. Plaintiff has failed to present evidence demonstrating any ambiguity in the use or common meaning of such language.

Additionally, the argument that because the Hold Harmless Agreement refers to Triangle Court as the "Owner," that must be the fact, is without merit. The parties do not contest the facts that Keap was the record titleholder to the subject premises on the date of the accident, and Triangle Court was merely a lessee. Triangle Court's Manager and "50% interest" member, Meir Babaev, admits "Triangle Court leased from ... (Keap)" the subject premises. As such, Arch has failed to demonstrate entitlement to partial summary judgment.

Plaintiff's remaining arguments and contentions either are without merit or need not be addressed in light of the foregoing determination.

Accordingly, Arch Specialty Insurance Company's motion seeking partial summary judgment, declaring that RLI must defend Triangle Court in connection with the underlying personal injury action, is denied.

Dated: December 19, 2018

HON. JOSEPH J. ESPOSITO, J.S.C.