

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United Specialty Insurance Company, }

Plaintiff, }

vs. }

The Klark Organization I; Bradbury
Stamm Construction, Inc., }

Defendants. }

No. CV-11-8043-PCT-PGR

ORDER

Through its three-count Second Amended Complaint (Doc. 13), plaintiff United Specialty Insurance Company seeks a declaration that it has no duty to defend or indemnify its insured, defendant The Klark Organization I, in connection with a construction defect lawsuit brought against Klark by defendant Bradbury Stamm Construction, Inc., due to various exclusions from coverage in the three commercial general liability insurance policies it issued to Klark.

On September 2, 2011, United Specialty and Bradbury Stamm filed a Stipulated Motion for Entry of Final Order of Judgment for United Specialty Insurance Company (Doc. 17), wherein they agree to the entry of a final judgment in United Specialty's favor providing in part that none of the insurance policies at issue provide coverage for the construction defect lawsuit, including any

1 indemnity or defense obligations. Conspicuously absent from the stipulated
2 motion is any specific request, much less any supporting argument, seeking
3 certification for a final judgment against Bradbury Stamm pursuant to
4 Fed.R.Civ.P. 54(b) (“When an action presents more than one claim for relief ... or
5 when multiple parties are involved, the court may direct entry of a final judgment
6 as to one or more, but fewer than all, claims or parties only if the court expressly
7 determines that there is no just reason for delay.”) A specific Rule 54(b) request
8 was required at the time the stipulated motion was filed because Klark was then
9 an existing party to the action inasmuch as it had already been served with
10 process and, although it had failed to make an appearance, it had not then had
11 default or default judgment entered against it. See Patchick v. Kensington
12 Publishing Corp., 743 F.2d 675, 677 (9th Cir.1984) (noting that a dismissal order
13 is not final if any defendant upon whom service has been made remains in the
14 action.) Entry of a final judgment resolving United Specialty’s claims against
15 Bradbury Stamm cannot therefore properly occur prior to the entry of judgment
16 against Klark.

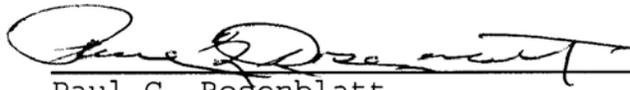
17 United Specialty filed an Application for Entry of Default of Defendant The
18 Klark Organization (Doc. 18) on September 2, 2011, and the Clerk of the Court
19 entered default against Klark (Doc. 20) on September 7, 2011. On September 8,
20 2011, United Specialty filed a Motion for Entry of Default Judgment Against
21 Defendant The Klark Organization (Doc. 21), wherein it seeks entry of judgment
22 against Klark pursuant to Fed.R.Civ.P. 55(b)(2) declaring that it does not have a
23 duty under its three insurance policies issued to Klark to defend Klark against the
24 lawsuit brought against it by Bradbury Stamm or to indemnify it for any settlement
25 or judgment in that lawsuit. Since a review of the record shows that Klark was
26

1 served with the Second Amended Complaint and that Klark has failed to answer
2 or otherwise respond to the Second Amended Complaint¹, and that Klark has
3 properly been defaulted, the Court finds that United Specialty has established
4 that a declaratory default judgment should be entered Klark. Therefore,

5 IT IS ORDERED that plaintiff United Specialty Insurance Company's
6 Motion for Entry of Default Judgment Against Defendant The Klark Organization
7 (Doc. 21) is granted.

8 IT IS FURTHER ORDERED that the Stipulated Motion for Entry of Final
9 Order of Judgment for United Specialty Insurance Company (Doc. 17) is granted
10 to the extent that plaintiff United Specialty Insurance Company shall submit a
11 proposed form of judgment resolving the entirety of this action no later than
12 **October 21, 2011.**²

13 DATED this 11th day of October, 2011.

14
15 
16 Paul G. Rosenblatt
United States District Judge

17
18
19
20 _____
21 1

22 The record also establishes that Klark was served with United
23 Specialty's First Amended Complaint, and, via United Specialty, with the Court's
24 Order (Doc. 12), entered on July 12, 2011, that admonished the parties that they
25 could not stipulate to an extension of time for Klark to file an answer without the
26 Court's approval and that required Klark to respond to the complaint.

2 2

27 The proposed form of judgment shall be consistent with the
28 requirements of Fed.R.Civ.P. 54(a) ("A judgment should not include recitals of
29 pleadings, a master's report, or a record of prior proceedings.")