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JS-6

5 Attorneys for Defendants MAXUM
 6 INDEMNITY COMPANY and S.H. SMITH
 & COMPANY, INC.
 7

8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 RE/MAX MEGA GROUP, a
 California Corporation,
 11
 Plaintiff,

Case No. CV 09-06310 DDP (CTx)

12 vs.

JUDGMENT

[Fed. R. Civ. Proc. Rule 56]

13 MAXUM INDEMNITY COMPANY, a
 14 Delaware Corporation; S.H. SMITH &
 COMPANY, INC., a Connecticut
 15 Corporation, and DOES 1-25, inclusive,
 16
 Defendants.
 17

18
 19 This matter having come on before this Court on Defendant Maxum
 20 Indemnity Company’s (“Maxum”) Motion for Summary Judgment against Plaintiff
 21 Re/Max Mega Group (“Re/Max”), and the Court, having reviewed all papers and
 22 pleadings of record and being fully advised of the premises, the Court finds the
 23 uncontroverted facts as follows:
 24

- 25 1. Maxum issued its Professional Liability Non-Medical (Claims Made) Policy
 26 No. PFP6005334-01, effective December 22, 2006 through December 22,
 27 2007 to Geenoh Corp. dba Re/Max Mega Group (“Re/Max”).
 28

(09cv06310)

- 1 2. The Policy provides that Maxum will indemnify Plaintiff for damages it
2 becomes legally obligated to pay “because of a negligent act, error or
3 omission in the rendering of or failure to render ‘professional services’ and
4 will defend Plaintiff “against any ‘suit’ seeking those damages,” subject to
5 certain limitations.
6
- 7
8 3. The coverage provision states that it applies only if (1) “[t]he negligent act,
9 error, or omission did not occur before the Retroactive Date, if any, shown in
10 the Declarations, and (2) [t]he claim is reported to us as soon as practicable,
11 but in no event later than thirty (30) days after the notice to any ‘insured.’
12
- 13 4. The Retroactive Date is December 22, 2006.
- 14
15 5. The Definitions provision explains that ‘claim’ means a written or verbal
16 demand received by an ‘insured’ for money or services, including notice of
17 service of ‘suit’ or institution of any administrative, judicial, arbitration or
18 alternative dispute proceedings against any ‘insured.’
19
- 20 6. A “suit” is defined as “a civil proceeding in which such ‘damages’ because
21 of the rendering of or failure to render ‘professional services’ to which this
22 insurance applies are alleged.”
23
- 24 7. A “suit” includes (a) “[a]n arbitration proceeding in which such ‘damages’
25 are claimed and to which any ‘insured’ must submit or does submit with our
26 consent, and any other alternative dispute resolution proceeding in which
27 such ‘damages’ are claims and to which any ‘insured’ submits with our
28

1 consent.

2
3 8. In the Underlying Action, Suk Young Yoo (“Yoo”), a buyer of residential
4 property who was represented in the purchase by Plaintiff and Maxum’s
5 Insured, Re/Max and its agent Lynn Kim, sued for 1) breach of contract; 2)
6 negligence; 3) breach of fiduciary duty; 4) violation of Civil Code §1102; 5)
7 fraud; and 6) negligent misrepresentation.
8

9 9. Yoo, a Korean native who speaks little English alleged that Plaintiff and its
10 agent, Lynn Kim represented Yoo in purchasing a residence located in
11 Rancho Palos Verdes (hereinafter the “Property”) pursuant to an agency
12 agreement dated October 19, 2006.
13

14 10. On October 19, 2006, the same day as the agency agreement, Yoo entered
15 into a Purchase Agreement to buy the Property.
16

17 11. Paragraph 14 of the California Residential Purchase Agreement set forth the
18 various deadlines in connection with the sale and provided that the time
19 periods could be extended, altered, modified, or changed by mutual
20 agreement in writing.
21

22 12. Pursuant to Paragraph 14, the seller was required to provide the buyer with
23 all required reports, disclosures, and information no later than seven days
24 from the date of acceptance of the contract.
25

26 13. The seller was required to disclose known material facts and defects affecting
27 the property, provide the buyer with a current preliminary title report,
28

1 disclose all matters known to affect title whether of record or not, and make
2 other disclosures required by law.

3
4 14. The buyer had seventeen days after acceptance to complete all investigations,
5 approve all disclosures, reports, and applicable information received from the
6 seller.

7
8 15. By the end of the seventeenth day period, the buyer was required to remove
9 any contingencies or cancel the agreement.

10
11 16. The original close of escrow, defined as the date upon which evidence of
12 transfer of title is recorded, was to occur on December 21, 2006.

13
14 17. On October 30, 2006 a preliminary title report was issued, showing that
15 the property was subject to three liens, the face value of which exceeded the
16 purchase price, and an option contract required that the Property be sold for
17 not less than \$1,682,000.

18
19 18. Ms. Kim, Yoo's agent employed by Plaintiff, received a copy of the
20 preliminary title report on November 16, 2006, and reported it to Plaintiff in
21 November.

22
23 19. According to Yoo, Plaintiff and Kim failed to disclose the liens, the option
24 contract, or the fact that the property was subject to foreclosure because the
25 seller had been in default.

26
27 20. Before Yoo filed the Underlying Action, Yoo's attorney sent several letters
28 to Plaintiff.

1 21. On January 26, 2007, Yoo's attorney mailed and faxed a letter to Plaintiff,
2 with a subject line "Suk Young Yoo v. ReMax; Lynn Kim, et. al. and stating
3 as follows:
4

5 Please be advised that Mr. & Mrs. Yoo has [sic] retained this
6 law firm to represent its [sic] interests regarding the purchase of 3546
7 Starline Drive, Rancho Palos Verde ("the property"). You are hereby
8 instructed not to contact our clients regarding this matter. Please
direct all further communications to this office.

9 Based on our review of the facts of this matter, your
10 employee/agent Lynn Kim acted as the Real Estate Agent for the sale
11 of the Property. Based on our review of the file, her action constitutes
12 negligence at the very least, but most likely will amount to fraud.
13 Thus her actions will likely subject her and Re/Max to punitive
14 damages. Ms. Lynn Kim retained separate counsel in this matter and
15 advised us not to contact Re/Max separately. However, we believe
16 that Re/Max's exposure in this case is significant and therefore, please
submit this letter to your insurance carrier and have your counsel
contact our office immediately.

17 22. On February 8, 2007, Yoo's lawyer mailed and faxed another letter titled
18 "Request for Mediation" and stating that "Suk Young Yoo, hereby request
19 [sic] for mediation pursuant to Paragraph 17B.(3) of the California
20 Residential Purchase Agreement and Joint Escrow Instructions
21 ("Agreement") executed on October 19, 2006 with your company and Lynn
22 Kim, acting as an agent/broker for the transaction.
23

24 23. The letter then explains, in detail, the nature of Yoo's claims against Re/Max
25 and Kim, and concludes by stating that "if we do not hear from you by
26 February 13, 2007, we will assume you elect not to mediate and pursue other
27
28

1 legal option [sic] including but not limited to, filing a lawsuit in a court of
2 law and a report against you and your agent, Lynn Kim with the Department
3 of Real Estate for the violations of professional code of duties and ethics.
4

5 24. On February 22, 2007, Yoo's lawyer mailed and faxed a third letter,
6 enclosing a copy of the Complaint and stating "we will file these documents
7 with the Court and the Department of Real Estate Enforcement Division to
8 commence formal proceedings against you and Lynn Kim on Monday,
9 February 26, 2007 unless notified by Friday, February 23, 2007, that Plaintiff
10 would like to participate in the mediation.
11

12
13 25. Plaintiff responded via a faxed letter on March 5, 2007, confirming prior
14 phone calls regarding the mediation and informing Yoo's lawyer that
15 Plaintiff would participate in mediation.
16

17 26. Plaintiff's lawyer, David Won, faxed a letter to Yoo's lawyer on March 7,
18 2007, stating that he represented both Plaintiff and Lynn Kim and stating that
19 he believed "that all parties, including, but not limited to, the seller, the
20 seller's broker (American Realty), the buyer and our clients, will participate
21 in the mediation."
22

23
24 27. After an unsuccessful mediation on April 6, 2007, Yoo filed suit against
25 Plaintiff on May 7, 2007.
26

27 28. Maxum first notice of Yoo's claim was on June 6, 2007.

28 29. On that day, Maxum received from Re/Max a copy of the complaint filed in

1 the underlying action (without exhibits), various notices of depositions and a
2 copy of a lease written in both Korean and English.

3
4 30. On June 11, 2007, Maxum disclaimed coverage for the claim, stating that
5 “[t]he alleged negligent act is alleged to have occurred on 10/19/06 or prior
6 to that date. This date is prior to the retroactive date of 12/22/06...”

7
8 31. The letter stated that “[b]y this disclaimer, we do not waive any other rights
9 or privileges under the terms and conditions” of the Policy.

10
11 32. On April 14, 2008, after receiving a request to reconsider the decision,
12 Maxum sent a fax to Plaintiff’s counsel stating that “[i]t appears this matter
13 was previously submitted and we disclaimed coverage.”

14
15 33. On April 23, 2008, Maxum sent a third letter “stand[ing] by” the disclaimer.

16
17 34. The Complaint alleges that the Underlying Action was resolved through
18 settlement or \$60,000 plus attorneys fees and costs of enforcement.

19 FURTHER, the Court makes the following conclusions of law:

- 20 1. The Court did not consider Plaintiff’s Motion to Strike nor its opposition to
21 Defendant’s motion (Docket No. 47-52, 55-65) because Plaintiff failed to
22 comply with the Court’s local rules and previous order requiring that any
23 opposition be timely filed; and as such documents were stricken from the
24 Docket;
- 25
26 2. Maxum owed no duty to defend or indemnify Plaintiff for the allegations
27 contained in the Complaint because Plaintiff failed to provide Maxum with
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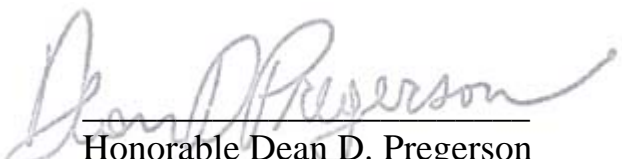
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notice of the claim relating to the *Suk Young Yoo v. Re/Max Mega Group, Inc., et. al.*, State of California, County of Los Angeles, Superior Court Case No. BC370637 within the time required by the Maxum policy, a condition precedent to coverage; and

3. Maxum did not waive its right to assert untimely notice for denial of coverage because it did not state such in its denial letters.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that pursuant to Fed. R. Civ. Pro. 56 Judgment should be entered in favor of Defendant Maxum and against Plaintiff Re/Max.

DATED: January 18, 2011


Honorable Dean D. Pregerson