

<b>Reynoso v Caroline Apts. Co.</b>
2014 NY Slip Op 33491(U)
January 22, 2014
Supreme Court, New York County
Docket Number: 112294/09
Judge: Paul Wooten
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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL WOOTEN  
Justice

PART 7

ANAGER REYNOSO,

Plaintiff,

INDEX NO.

112294/09

- against -

MOTION SEQ. NO.

002

CAROLINE APTS. COMPANY  
PAN AM EQUITIES, LLC.,

Defendants.

**FILED**

FEB 03 2014

CAROLINE APTS. COMPANY  
PAN AM EQUITIES, LLC.,

Third-Party Plaintiffs,

NEW YORK

THIRD-PARTY INDEX NO.

591129/09

- against -

COUNTY CLERK'S OFFICE

MCGLYNN, HAYS & CO., INC.,

Third-Party Defendant.

RECEIVED  
FEB 03 2014  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

The following papers were read on this motion by defendants/third party plaintiffs for partial summary judgment.

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits (Memo) \_\_\_\_\_

Replying Affidavits (Reply Memo) \_\_\_\_\_

Cross-Motion:  Yes  No

The motion by defendants/third-party plaintiff Caroline Apts. Co. (Caroline Apts.) and Pan Am Equities, Inc. (Pan Am), pursuant to CPLR 3212, for an order granting summary judgment in their favor on: (a) the first cause of action in the third-party complaint against third-party defendant McGlynn, Hays & Co., Inc. (McGlynn) for contractual indemnification of all claims pursuant to the contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date; (b) the second cause of action in the third-party complaint against McGlynn for common law indemnification of all claims, including attorneys'

fees and costs for defending this lawsuit to date; and (c) on the fourth cause of action for breach of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date is denied in its entirety.

Where a question of fact exists regarding Pan Am and Caroline Apts.' negligence, a conditional order of summary judgment must be denied as premature for contractual indemnification (*see Narvaez v 2914 Third Ave. Bronx, LLC*, 88 AD3d 500 [1st Dept 2011]) or common law indemnification (*see Bovis Lend Lease LMB Inc. v Garito Contr., Inc.*, 65 AD3d 872 [1st Dept 2009]) and where there are triable issues of fact as to whose negligence, if any, caused the plaintiffs accident, it is premature to conditionally grant a motion for summary judgment on those causes of action. Here, the service agreement entitles Caroline Apt and Pan Am to contractual indemnification, however, their motion for summary judgment, on this ground, is premature. Pan Am and Caroline Apts.'s motion for summary judgment on their first and second causes of action in the third-party complaint are denied without prejudice, until such determination of liability in the underlying case is rendered. Furthermore, the Court finds that Caroline Apts. and Pan Am are not entitled to summary judgment on their fourth cause of action for breach of contract, as mere conclusory statements that McGlynn failed to procure the proper insurance is not sufficient to meet their *prima facie* burden. As such, this motion is denied.

#### CONCLUSION

For these reasons and upon the foregoing papers, it is,

ORDERED that the portion of defendants/third-party plaintiff Caroline Apts. Co. and Pan Am Equities, Inc.'s motion seeking summary judgment on their contractual and common law indemnification claims is denied without prejudice as premature; and it is further,

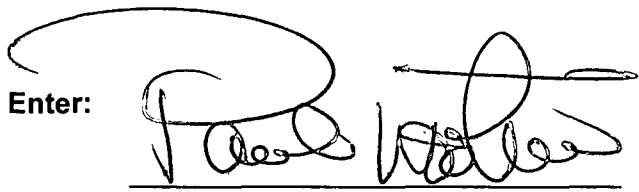
ORDERED that the portion of defendants/third-party plaintiff Caroline Apts. Co. and Pan Am Equities, Inc.'s motion seeking summary judgment on the fourth cause of action for breach of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending

of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date is denied; and it is further,

ORDERED that counsel for plaintiff is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 1/22 /14

Enter:   
PAUL WOOTEN, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: :  DO NOT POST  REFERENCE

**FILED**  
FEB 03 2014  
NEW YORK  
COUNTY CLERK'S OFFICE

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

PRESENT: HON. PAUL WOOTEN  
Justice

PART 7

ANAGER REYNOSO,  
Plaintiff,  
- against -  
CAROLINE APTS. COMPANY  
PAN AM EQUITIES, LLC.,  
Defendants.

INDEX NO. 112294/09  
MOTION SEQ. NO. 002

CAROLINE APTS. COMPANY  
PAN AM EQUITIES, LLC.,  
Third-Party Plaintiffs,  
- against -  
MCGLYNN, HAYS & CO., INC.,  
Third-Party Defendant.

THIRD-PARTYINDEX NO. 591129/09

The following papers were read on this motion by defendants/third party plaintiffs for partial summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits (Memo) \_\_\_\_\_  
Replying Affidavits (Reply Memo) \_\_\_\_\_

PAPERS NUMBERED
_____
_____

Cross-Motion:  Yes  No

The motion by defendants/third-party plaintiff Caroline Apts. Co. (Caroline Apts.) and Pan Am Equities, Inc. (Pan Am), pursuant to CPLR 3212, for an order granting summary judgment in their favor on: (a) the first cause of action in the third-party complaint against third-party defendant McGlynn, Hays & Co., Inc. (McGlynn) for contractual indemnification of all claims pursuant to the contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date; (b) the second cause of action in the third-party complaint against McGlynn for common law indemnification of all claims, including attorneys'

fees and costs for defending this lawsuit to date; and (c) on the fourth cause of action for breach of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date is denied in its entirety.

Where a question of fact exists regarding Pan Am and Caroline Apts.' negligence, a conditional order of summary judgment must be denied as premature for contractual indemnification (*see Narvaez v 2914 Third Ave. Bronx, LLC*, 88 AD3d 500 [1st Dept 2011]) or common law indemnification (*see Bovis Lend Lease LMB Inc. v Garito Contr., Inc.*, 65 AD3d 872 [1st Dept 2009]) and where there are triable issues of fact as to whose negligence, if any, caused the plaintiffs accident, it is premature to conditionally grant a motion for summary judgment on those causes of action. Here, the service agreement entitles Caroline Apt and Pan Am to contractual indemnification, however, their motion for summary judgment, on this ground, is premature. Pan Am and Caroline Apts.'s motion for summary judgment on their first and second causes of action in the third-party complaint are denied without prejudice, until such determination of liability in the underlying case is rendered. Furthermore, the Court finds that Caroline Apts. and Pan Am are not entitled to summary judgment on their fourth cause of action for breach of contract, as mere conclusory statements that McGlynn failed to procure the proper insurance is not sufficient to meet their *prima facie* burden. As such, this motion is denied.

#### CONCLUSION

For these reasons and upon the foregoing papers, it is,

ORDERED that the portion of defendants/third-party plaintiff Caroline Apts. Co. and Pan Am Equities, Inc.'s motion seeking summary judgment on their contractual and common law indemnification claims is denied without prejudice as premature; and it is further,

ORDERED that the portion of defendants/third-party plaintiff Caroline Apts. Co. and Pan Am Equities, Inc.'s motion seeking summary judgment on the fourth cause of action for breach of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending

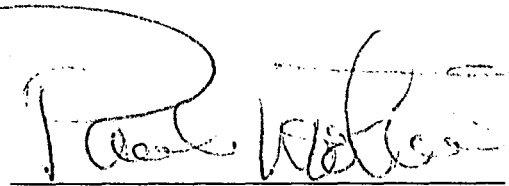
of contract between Pan Am and McGlynn, including attorneys' fees and costs for defending this lawsuit to date is denied; and it is further,

ORDERED that counsel for plaintiff is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 1/22/14

Enter:



PAUL WOOTEN, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: :  DO NOT POST  REFERENCE