Brenner v	Hermitage	Ins. Co.
	nonnago	

2018 NY Slip Op 32667(U)

October 16, 2018

Supreme Court, New York County

Docket Number: 153615/2016

Judge: Debra A. James

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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. DEBRA A. JAMES		PART	IAS MOTION 59EFM		
		Justice			
		X	INDEX NO.	153615/2016	
IAN BRENNE	R		MOTION DATE	10/16/2018	
	Plaintiff,				
	- V -		MOTION SEQ. N	0003	
HERMITAGE	INSURANCE COMPANY,				
Defendant.		DECISION AND ORDER			
-	e-filed documents, listed by NYSCE 4, 45, 46, 47, 48, 50, 51, 52, 53, 54, 5		mber (Motion 003)) 36, 37, 38, 39, 40,	
were read on this motion to/for		, ,	JUDGMENT - SUMMARY		
	<u>C</u>	RDER			
Upor	n the foregoing documen	ts, it is			
ORDE	CRED that the motion	for summar	y judgment	of defendant	
HERITAGE	INSURANCE COMPANY is	s granted	and the	complaint is	

dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant dismissing the complaint, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

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DECISION

This court agrees with defendant insurance carrier that the date of loss is determined by the date that the premises suffered damage and not the date that the insured discovered such damage. <u>See Lichter Real Estate Number Three, LLC v</u> <u>Greater N.Y. Ins. Co.</u>, 43 AD3d 366 (1st Dept. 2007). The deposition testimony of plaintiff's property manager that the vandalism damage occurred before he signed the hold harmless agreement on April 11, 2014, prima facie establishes defendant's entitlement to summary dismissal of the complaint against it for breach of the insurance policy, which complaint is barred by the two-year limitation clause. <u>See 155th Street and 8th Ave. Realty</u> <u>Corp. v National Casualty Co.</u>, 221 AD2d 290 (1st Dept. 1995).

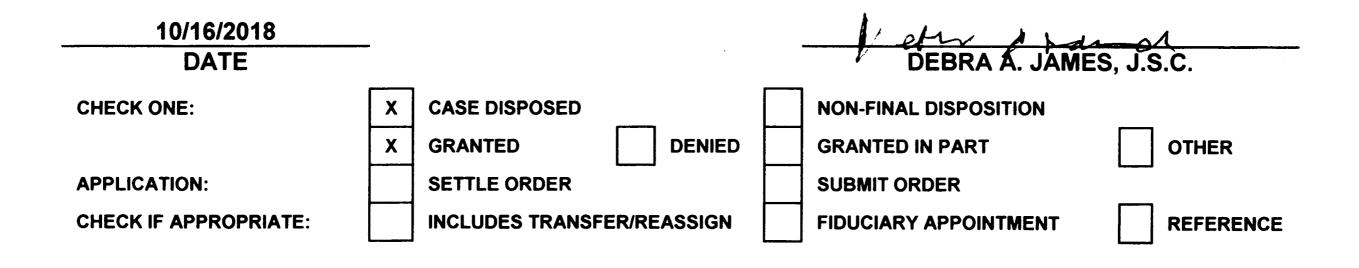
Moreover, plaintiff fails to come forward with any evidence

refuting that submitted by defendant that tends to show that the loss occurred no later than February 27, 2014. The defendant appends copies of logs that show that on such date, the Town of Hempstead building inspector, determining "the heat, hot water and electricity were not functioning", posted the 72-hour notice on the premises. Nor persuasive is plaintiff's argument that the loss was not ascertainable before his property manager signed the hold harmless agreement on April 11, 2014, because the Town of Hempstead had boarded up the premises on March 31, 2014, denying him access. Defendant comes forward with no

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written lease that denied him the right to re-enter and duty to repair the premises, let alone any evidence of whether an "oral agreement included a right to re-enter and a duty to repair" (<u>see Sanchez v Irun</u>, 83 AD3d 611, 612 [1st Dept. 2011]), before the premises were so boarded.

The court also agrees with defendant that plaintiff's 34day delay in providing notice of the loss was unreasonable and unjustified. <u>See Pandora Industries, Inc. v St. Paul Surplus</u> Lines Ins. Co., 188 AD2d 277 (1st Dept. 1992).



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