AIG Prop. Cas. Co. v Farm Family Cas. Ins. Co.
2020 NY Slip Op 33969(U)
December 1, 2020
Supreme Court, New York County
Docket Number: 156408/2019
Judge: W. Franc Perry

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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AIG PROPERTY CASUALTY COMPANY

Plaintiff,

- v -

FARM FAMILY CASUALTY INSURANCE COMPANY,

Defendant.

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INDEX NO. 156408/2019

MOTION DATE 01/30/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER .

Plaintiff AIG Property Casualty Company brings this action against Defendant Farm Family Casualty Insurance Company to enforce a $299,382.16 judgment it obtained against non-party Hygienic Cleaning & Restoration, LLC ("Hygienic") in Supreme Court, Suffolk County, on the grounds that Defendant is the insurer of Hygienic. (NYSCEF Doc No. 23, judgment.)

Defendant moves for summary judgment, asking this court to dismiss the complaint and declare that it has no obligation to satisfy the judgment that Plaintiff obtained against Hygienic. (NYSCEF Doc No. 4.) Plaintiff cross moves for summary judgment. (NYSCEF Doc No. 17.)

BACKGROUND

Plaintiff is the insurer of Larry and Jane Scheinfeld (the "Claimants"). On May 12, 2017, the Claimants retained Hygienic to clean silk rugs and carpets (the "rugs") in their home. Plaintiff alleges that Hygienic severely damaged the rugs through its own negligence, causing Plaintiff to reimburse the Claimants for damages in the sum of $255,921.56.

Plaintiff commenced an action in Supreme Court, Suffolk County, to recover against Hygienic. On March 20, 2019, a default judgment was entered in favor of Plaintiff in the sum of

$299,382.16. To date, no part of the judgment has been paid. Plaintiff now seeks to recover against Defendant, the insurer of Hygienic, alleging that Defendant is legally obligated to fulfill the judgment pursuant to the terms of Hygienic's insurance policy.

Defendant moves to dismiss the complaint on the grounds that the damage to the rugs is not covered under the policy. Specifically, Defendant argues that the policy excludes coverage for property damage caused by Hygienic's work being performed incorrectly (the "performance" exclusion). (NYSCEF Doc No. 15 at 4-5.) Additionally, Defendant argues that coverage is excluded for property damage to "'your work' arising out of it or any part of it and included in the products-completed operations hazard" (the "property" exclusion"). (NYSCEF Doc No. 15 at 6, citing NYSCEF Doc No. 7 at 22.)

Plaintiff cross-moves for summary judgment, arguing that the property damage exclusion does not apply to property damage included in the "products-completed operations hazard". (NYSCEF Doc No. 25 at 3, citing NYSCEF Doc No. 7 at 21-22.) The "products-completed operations hazard" includes all "'property damage' occurring away from premises you own or rent and arising out of . . . 'your work' except: . . . work that has not yet been completed or abandoned." (NYSCEF Doc No. 7 at 31.) Work is deemed completed when 1) all of the work in the contract is completed; 2) when all of the work at the job site has been completed if a contract provides for work at more than one job site; or 3) when work done at a job site has been put to its intended use by any person other than a contractor working on the same project, whichever comes first. (*Id.*)

DISCUSSION

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ.*

Med. Ctr., 64 NY2d 851, 853 [1985].) "Failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted].) Upon proffer of evidence establishing a prima facie showing of entitlement by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.'" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].)

"Generally, the courts bear the responsibility of determining the rights or obligations of parties under insurance contracts based on the specific language of the policies." (*State of New York v Home Indem. Co.*, 66 NY2d 669, 671 [1985].) "[W]ell-established principles governing the interpretation of insurance contracts . . . provide that the unambiguous provisions of an insurance policy, as with any written contract, must be afforded their plain and ordinary meaning, and that the interpretation of such provisions is a question of law for the court." (*Broad St., LLC v Gulf Ins Co.*, 37 AD3d 126, 130-131 [1st Dept 2006].)

"[A]lthough the insurer has the burden of proving the applicability of an exclusion it is the insured's burden to establish the existence of coverage (*see Lavine v Indemnity Ins. Co.*, 260 NY 399, 410 [1933]). Thus, '[where] the existence of coverage depends entirely on the applicability of [an] exception to the exclusion, the insured has the duty of demonstrating that it has been satisfied.'" (*Platek v Town of Hamburg*, 24 NY3d 688, 694 [2015] [internal citations omitted].)

The court finds that Defendant has set forth a prima facie case for summary judgment in its favor by demonstrating that the performance exclusion applies to the rug damage. Plaintiff responds by arguing that the rug damage falls into the "products-completed operations hazard," an exception to the exclusion. However, the exception does not apply in this case.

As the First Department held in a case involving identical language in an insurance coverage dispute:

> [the] policy ... does not insure against faulty workmanship in the product itself but rather faulty workmanship in the work product which creates a legal liability by causing bodily injury or property damage *to* something other than the work product. The policy was never intended to provide contractual indemnification for economic loss to a contracting party because the work product contracted for is defectively produced.

(*Scottsdale Ins. Co. v Plumb Level & Square Const. Inc.*, 2010 WL 1458985 [Sup Ct, NY County 2010], citing *George A. Fuller Co. v United States Fid. & Guar. Co*., 200 AD2d 255, 259 [1st Dept 1994].) "To interpret the policy as [Plaintiff does] would transform [Defendant] into a surety for the performance of [Hygienic's] work." (*George A. Fuller Co.*, 200 AD2d at 260.) Accordingly, it is hereby

ORDERED that Defendant's motion for summary judgment is granted, in that Defendant Farm Family Casualty Insurance Company has no obligation to satisfy any part of the judgment obtained by Plaintiff against non-party Hygienic Cleaning & Restoration, LLC; and it is further

ORDERED that the cross-motion by Plaintiff is denied; and it is further

ORDERED that the Complaint is dismissed with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

12/01/20					W. FRANC PERRY, J.S.C.		
DATE							
CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE