SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

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NORTHFIELD INSURANCE COMPANY,

Plaintiff,

– against –

Z & J MANAGEMENT LLC d/b/a MENORAH 7772001 MANAGEMENT, 107 STEUBEN STREET LLC, and JENELLE SOOKLAL, AS ADMINISTRATOR OF THE ESTATE OF RAVI SOOKLAL,

Defendants.

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Index No.: 506736/2014
Motion Date: 10/28/2020
Motion Seq.: 08

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 08) 143-179, 211-216 and 218 were read on these motions for summary judgment.

In this action for declaratory judgment, plaintiff Northfield Insurance Company (hereinafter Northfield) moves for an order: (1) granting default judgment against Z & J Management LLC d/b/a Menorah 7772001 Management (hereinafter Z & J); (2) granting summary judgment; (3) dismissing defendant 107 Steuben Street LLC's (hereinafter Steuben) and defendant Jenelle Sooklal, as Administrator of the Estate of Ravi Sooklal's counterclaims against Northfield; (4) declaring that Northfield has no obligation to provide coverage to, or to defend or indemnify, defendants Z & J, Steuben, or any other entity in connection with the underlying action, *Sooklal v 107 Steuben Street, LLC, Z & J Management, LLC*, Index No. 14439/2013 (Sup Ct, Kings Cty 2013) (hereinafter *Sooklal*); (5) declaring that Northfield may withdraw from the defense it has provided Z & J in *Sooklal* pending the outcome of this declaratory judgment action; and (6) granting such other and further relief as the Court deems appropriate. Steuben and the Estate of Ravi Sooklal both oppose the motion, but Z & J has never answered in this action. For the reasons set forth below, the plaintiff's motion is granted in its entirety.

The instant matter flows from a liability insurance coverage dispute related to an underlying bodily injury action brought by Ravi Sooklal against Z & J and Steuben (*Sooklal*, Index No. 14439/2013). Mr. Sooklal was allegedly injured in a fall while performing work at a construction site during the course of his employment by Z & J, and Northfield had issued a commercial general liability policy to Z & J that was in effect at the time of the accident. Steuben was the owner of the project and had hired Z & J to perform extensive renovation, construction, and demolition work at 105 and 107 Steuben Street.

Following the subject accident of *Sooklal*, Northfield denied coverage to Z & J based on policy exclusions titled "Injury to Employees, Workers or Contracted Persons of Insureds or Contracted Organizations" (hereinafter the "Contracted Persons" exclusion) and "Employer's Liability." *See* Exhibit A, NYSCEF Doc. No. 173. Northfield additionally disclaimed coverage

as to Steuben on the grounds that Steuben does not qualify as an additional insured under the policy because there is no contract between the parties. Northfield further states that, despite these disclaimers, it agreed to defend Z & J in *Sooklal* pending a determination of Northfield's rights in this action. Northfield now moves for summary judgment and a default judgment declaring that Northfield has no obligation to defend or indemnify any party in *Sooklal* and that Northfield can withdraw from the defense it is providing Z & J.

Northfield argues that it is not responsible for covering the subject accident because Mr. Sooklal was injured during the course of his employment with Z & J. The liability policy issued to Z & J was for the period of April 9, 2013 to April 9, 2014 and was subject to a $1 million per occurrence limit. Per the "Employer's Liability" exclusion, the policy does not apply to: "'Bodily injury' to: (1) An 'employee' of the insured arising out of and in the course of: (a) Employment by the insured; or (b) Performing duties related to the conduct of the insured's business." Furthermore, pursuant to the "Contracted Persons" exclusion, the coverage does not apply to bodily injury to:

1. Any person who is an "employee", "leased worker", "temporary worker", "volunteer worker" of you or any insured arising out of and in the course of:
    a. Employment by you or any insured; or
    b. Performing duties related to the conduct of your or any insured's business
2. Any person who contracted with you or with any insured for services arising out of and in the course of performing duties related to the conduct of your or any insured's business….

Steuben opposes the motion, arguing that it is clear that Z & J and Steuben intended to have Northfield add Steuben as an additional insured because Z & J requested that a certificate of insurance be issued to the property owner at the time the contract was entered into. Stueben argues that Northfield issued a proper certificate of insurance to owners of the real property when construction began, and which subsequently was transferred to Steuben. Steuben argues that Northfield cannot deny issuing the certificate of insurance, which allegedly overrides any argument that Northfield makes concerning the contract between Steuben and Z & J. Steuben claims that it relied upon the certificate of insurance in permitting Z & J to perform the construction work and, as a result, Northfield is still obligated to defend Steuben.

The Estate of Ravi Sooklal also opposes the motion, arguing that the motion is premature because of incomplete or inconclusive discovery. As an example, Ms. Sooklal points out that the deposition of the Z & J representative, Vladimir Ushen, was stopped in the middle and never completed. Ms. Sooklal argues that there remains a question of material fact as to Mr. Sooklal's employment status because the evidence does not yet establish whether Mr. Sooklal was an "employee" of Z & J or simply an independent contractor. Ms. Sooklal argues that, *inter alia,* Mr. Sooklal never received Workers' Compensation benefits, and that the entire purpose of the provision excluding workers is to prevent duplicate coverage, which cannot occur if Mr. Sooklal was not covered by Workers' Compensation. As a result, Ms. Sooklal asserts that these unresolved questions raise triable issues of fact sufficient to defeat summary judgment.

In its reply, Northfield responds to Steuben's argument by stating that a certificate of insurance does not confer coverage, and that Steuben even admits that it has no contract with Z & J requiring that Steuben be named as an additional insured. Northfield also points to other cases in which the Appellate Division, Second Department has upheld the same exclusion as being unambiguous, such as in *Northfield Insurance Company v Fancy General Construction, Inc.*, 167 AD3d 916 (2d Dept 2018). In response to Ms. Sooklal's opposition, Northfield argues that the "Contracted Persons" exclusion applies regardless of whether Mr. Sooklal was an employee of Z & J or an independent contractor, rendering this alleged question of fact moot.

Summary judgment is a drastic remedy and may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986); *see also Phillips v Joseph Kantor & Co.*, 31 NY2d 307 (1972). The moving party is required to make a prima facie showing of entitlement to judgment as a matter of law, and evidence must be tendered in admissible form to demonstrate the absence of any material issues of fact. *Alvarez*, at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 (1980). The papers submitted in the context of the summary judgment application are always viewed in the light most favorable to the party opposing the motion. *Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 (2d Dept 1990). If the prima facie burden has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. CPLR § 3212 (b); *see also Alvarez*, at 324; *Zuckerman*, at 562. Generally, the party seeking to defeat a motion for summary judgment must tender evidence in opposition in admissible form, and mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient. *Zuckerman*, at 562.

Whenever an insurer seeks to exclude certain coverage from its policy obligations, it must do so in "clear and unmistakable" language. *Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 311 (1984); *see also Minchala v 829 Jefferson, LLC*, 177 AD3d 866 (2d Dept 2019); *Conlon v Allstate Vehicle and Property Ins. Co.*, 152 AD3d 488 (2d Dept 2017). Policy exclusions are not to be extended by interpretation or implication, but should be accorded a strict and narrow construction. *Seaboard* at 311; *see also Hansard v Federal Ins. Co.*, 147 AD3d 734 (2d Dept 2017); *Rego Park Holdings, LLC v Aspen Specialty Ins. Co.*, 140 AD3d 1147 (2d Dept 2016). Before an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation. *Seaboard* at 311; *see also Rego Park* at 1148. The Court, however, is "not free to disregard the plain meaning of the policy language to find an ambiguity where none exists." *Hansard* at 737; *see also Minchala* at 868; *Howard & Norman Baker, Ltd. v American Safety Cas. Ins. Co.*, 75 AD3d 533 (2d Dept 2010). Furthermore, a certificate of insurance does not support a claim for additional insured status that does not exist under the policy language itself. *See Harco Constr., LLC v First Mercury Ins. Co.*, 148 AD3d 870 (2d Dept 2017); *Hargob Realty Assocs., Inc. v Fireman's Fund Ins. Co.*, 73 AD3d 856 (2d Dept 2010); *Home Depot U.S.A., Inc. v National Fire & Marine Ins. Co.*, 55 AD3d 671 (2d Dept 2008).

In *Northfield Insurance Company v Fancy General Construction, Inc.*, 167 AD3d 916, which involved a similar motion for summary judgment in an action for declaratory relief, the plaintiff insurance company issued a commercial general liability policy which contained the

same exact exclusion for bodily injury to an employee in the event that the injury occurred in the course of employment. In granting the relevant branch of the motion for summary judgment, the Appellate Division, Second Department found that the policy's language was unambiguous, and the plain meaning of the exclusion was that the policy did not provide coverage for damages arising out of bodily injury sustained by an employee of any insured in the course of his or her employment. *Id.* at 918.

In the instant matter, Northfield has met its burden of establishing that the cited policy exclusion applies in this case, and that the exclusion is subject to no other reasonable interpretation. *See Seaboard* at 311; *see also Jahier v Liberty Mut. Group*, 64 AD3d 683 (2d Dept 2009). Pursuant to the "Employer's Liability" and "Contracted Persons" exclusions, the policy does not apply to bodily injury to employees of the insured, nor does it apply to bodily injury to those who contracted with the insured for services arising out of the performance of duties related to the conduct of the insured's business. Given the unambiguous language of these provisions, it is immaterial whether Mr. Sooklal was an employee of Z & J or an independent contractor: one or both exclusions would apply in each scenario, allowing Northfield to disclaim coverage. As a result, the plaintiff's motion was not premature, as the defendants failed to demonstrate how further discovery might reveal or lead to relevant evidence, or that facts essential to oppose the motion were exclusively within the plaintiff's control. *See* CPLR § 3212[f]; *Yiming Zhou v 828 Hamilton, Inc.*, 173 AD3d 943 (2d Dept 2019). Mere hope or speculation that evidence may be uncovered during the discovery process is insufficient to deny a motion for summary judgment. *See Booker v NYCHA*, 167 AD3d 690 (2d Dept 2018); *Abramov v Miral Corp.*, 24 AD3d 397 (2d Dept 2005) (defendants' purported need to conduct discovery does not warrant denial of the motion for summary judgment as the defendants had personal knowledge of the relevant facts).

Furthermore, Steuben does not qualify as an additional insured under the Northfield policy as there is no written contract requiring Z & J to name Steuben as an additional insured. Steuben's assertion that the parties intended to have Northfield add Steuben as an additional insured because of the existence of a certificate of insurance is unavailing. It is well-established that a certificate of insurance does not support a claim for additional insured status. *See Harco* at 872.

With regard to the prong of the motion seeking default judgment against Z & J, it is significant that this is the third motion seeking default judgment filed by Northfield. Plaintiff filed the Summons and Complaint in this matter on July 23, 2014 and served Z & J through the Secretary of State pursuant to Limited Liability Company Law § 303 on or about August 13, 2014. *See* NYSCEF Doc. No. 3. However, Z & J has never answered or otherwise responded in this action. Northfield filed its first motion for default judgment against Z & J on September 14, 2015. On or about October 8, 2015, Northfield was notified that Ravi Sooklal passed away, after which the matter was stayed and the motion for default removed from the calendar. Northfield re-filed its motion for default on December 6, 2017, however in an order dated May 17, 2018, the motion was marked off calendar without prejudice until the estate of Ravi Sooklal was brought into the action. *See* NYSCEF Doc. No. 71. On December 17, 2018, Northfield filed its motion to substitute the administrator of the estate of Ravi Sooklal in place of Ravi Sooklal, and

this motion was granted on May 23, 2019. Northfield also filed a motion seeking to compel responses to its discovery demands earlier this year.

The proof needed to demonstrate that a default judgment is warranted includes: (1) proof of service of the summons and the complaint; (2) proof of facts constituting the claim; and (3) proof of default. *See* CPLR § 3215(f); *Lewis v Solny*, 172 AD3d 1352 (2d Dept 2019); *Dupps v Betancourt*, 99 AD3d 855 (2d Dept 2012); *Atl. Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649 (2d Dept 2011). Z & J has been served with the summons and complaint and it has failed to appear or serve an answer. Furthermore, Northfield has set forth sufficient proof of facts in support of its claim. Notably, a plaintiff is not required to seek the entry of judgment for default within one year "as long as proceedings are being taken that manifest an intent not to abandon the case but to seek a judgment." *US Bank N.A. v Dorestant*, 131 AD3d 467, 469 (2d Dept 2015). Here, Northfield has manifested an intent to move the action forward and seek a judgment throughout the life of this case. The two prior motions seeking default judgment were not determined on the merits. Accordingly, the prong of the motion seeking default against Z & J is also granted.

The remaining contentions are without merit.

Accordingly, it is hereby

ORDERED, that the plaintiff's motion (Motion 08) for default judgment against Z & J Management LLC, and for a declaration that Northfield has no obligation to provide coverage to, or defend or indemnify any entity in connection with *Sooklal v 107 Steuben Street, LLC, Z & J Management, LLC*, Index No. 14439/2013 (Sup Ct, Kings Cty 2013), is hereby GRANTED in its entirety.

This constitutes the decision and order of the Court.

DATED: December 18, 2020

Lillian Wan

HON. LILLIAN WAN, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.