

**Manhattan Concrete LLC v Prime Prop. & Cas. Ins.
Inc.**

2023 NY Slip Op 31702(U)

May 18, 2023

Supreme Court, New York County

Docket Number: Index No. 656746/2020

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

MANHATTAN CONCRETE LLC,
Plaintiff,

- v -

PRIME PROPERTY & CASUALTY INSURANCE
INC., OVATION RISK PLANNERS, INC.,
Defendant.

-----X

PRIME PROPERTY & CASUALTY INSURANCE INC.
Plaintiff,

-against-

SCOTTISH AMERICAN INSURANCE GENERAL AGENCY,
INC.
Defendant.

-----X

INDEX NO. 656746/2020
MOTION DATE N/A
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596048/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to/for DISCOVERY.

Defendant Prime Property & Casualty Insurance Company, Inc. (“Prime”)’s motion to compel defendant Ovation Risk Planners, Inc. (“Ovation”) to respond “fully” to a notice of discovery dated November 24, 2021, interrogatories from November 24, 2021 and a demand for insurance information is denied, except that Ovation must produce the insurance information (as it said it would in opposition) by May 26, 2023.

Background

In September and October 2018, two employees of plaintiff were injured while at a construction site in Brooklyn. Plaintiff claims that it purchased a construction contractor liability insurance policy from defendant Prime Property & Casualty Insurance Inc. (“Prime”) for the period from August 1, 2018 through August 1, 2019. Both of the injured employees commenced lawsuits in Kings County and plaintiff contends that Prime denied coverage for defense and indemnification in both cases. Plaintiff contends that it complied with all the terms and conditions of the policy and asserts that the denial of coverage was improper.

Prime offers a different version of events. It claims that plaintiff withheld critical information in its application for insurance, information which would have caused Prime to not issue the policy. Prime alleges that plaintiff had a previous policy which was cancelled due to plaintiff’s non-payment of the premium, among numerous misrepresentations. Ovation was plaintiff’s insurance broker.

In this motion, Prime emphasizes that it wants discovery from Ovation about a policy plaintiff had with Colony Insurance Company (“Colony”) that was cancelled for non-payment of premium and for which both Prime and Ovation misrepresented on the application sent to Prime. Prime argues that plaintiff, through its agent Ovation, misrepresented that it was covered by Colony when that policy had already been canceled and altering the premium about for the Colony policy. Prime demands that Ovation provide responses to request numbers 1-11, 13-17, and 20-21 as well as to its interrogatories, for which Ovation did not verify.

In opposition, Ovation claims it has already produced 306 pages of documents, including other general liability policies procured by Ovation on plaintiff’s behalf. It claims that its objections to the various discovery demands were valid as the information sought by Prime is not

relevant. In particular, Ovation maintains that Prime alleges a discreet number of misrepresentations related to the policy issued by Colony to plaintiff. It insists that does not justify producing every policy Ovation ever obtained on behalf of plaintiff. Ovation also argues that request number 9—about complaints against Ovation filed with the Department of Financial Services—is not probative of anything.

Ovation also emphasizes that it was not the broker for the Colony policy and so it was not involved with the procurement or cancellation of that policy. It emphasizes that Prime admits it has a copy of the version of the Colony policy that Ovation sent to Sottish American Insurance (the one that allegedly contains the misrepresentations) and that Prime can get the complete policy from plaintiff. Ovation says it will provide a response to the demand about insurance.

The Court did not consider the improperly filed reply as the order to show cause did not permit such a filing.

Discussion

The Court denies the branches of the motion that seeks to compel Ovation to fully respond to certain document requests and interrogatories at this time. In this Court's view, Ovation met its burden to show that it has adequately responded to these demands. As Ovation points out, Prime can get other potential versions of the Colony policy from plaintiff (or possibly from Colony itself). A critical part of the Court's findings here is that Ovation claims it was not the broker for plaintiff with respect to the Colony policy. That limits Ovation's burden with respect to discovery about that policy, especially given that plaintiff was the insured.

The Court agrees with Ovation that requests about every single policy it procured for plaintiff are irrelevant. That includes the requests for "All notices of cancelation sent to Manhattan Concrete and/or Ovation from any insurer relating to the cancelation of any policy

issued to Manhattan Concrete,” “Copies of all commercial general liability policies procured by Ovation for Manhattan Concrete,” “Copies of all umbrella/excess liability insurance policies procured by Ovation for Manhattan Concrete” and “All ACORD Applications for Insurance (as that term is defined, supra)” (NYSCEF Doc. No. 100, Requests 10, 13, 14 and 15). These requests are way too broad and it is not this Court’s role to redraft the document requests.

The same analysis applies to the interrogatories which asks Ovation to “Identify all insurance policies procured by Ovation for Manhattan Concrete” and “Identify all ACORD Applications for Insurance submitted to any insurer by Ovation on behalf of Manhattan Concrete, whether signed by an Ovation representative, a Manhattan Concrete representative, or both” (NYSCEF Doc. No. 101 at 2-3).

As Ovation points out, the counterclaims alleged by Prime against plaintiff (not Ovation) assert four misrepresentations: 1) that plaintiff claimed it had not had a policy cancelled in the last three years when, in fact, the Colony policy was cancelled, 2) that plaintiff was insured by Colony, 3) altering the declarations page about the premium amount for the Colony policy and 4) altering an endorsement to make it appear that the Colony policy excluded coverage for risk associated with the type of work plaintiff performed.

These misrepresentations do not open the door to every interaction Ovation had with plaintiff concerning every single insurance policy or application for insurance. The real issue, at least with respect to Prime’s counterclaims, is about the Colony policy and the requests are overly broad and irrelevant.

The Court finds that the better course of action is for the parties to finally hold depositions. At the depositions, Prime can explore the exact roles of plaintiff and Ovation with respect to the Colony policy and the alleged misrepresentations. That may yield more

information so that Prime can fashion targeted and relevant discovery demands. But, on this record, the Court does not see how Ovation (against whom Prime did not bring any crossclaims) must give, essentially, its entire file regarding plaintiff.

Accordingly, it is hereby

ORDERED that defendant Prime Property & Casualty Insurance Company, Inc.'s discovery motion is denied; and it is further

ORDERED that the deadline for depositions is extended until June 5, 2023; and it is further

ORDERED that Ovation shall produce the requested insurance information that it already agreed to produce by May 26, 2023.

5/18/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE