Tara-59 Holding Corp. v National Fire Ins. Co. of Hartford
2017 NY Slip Op 30548(U)
March 20, 2017
Supreme Court, New York County
Docket Number: 650873/2014
Judge: Robert R. Reed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 43
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TARA-59 HOLDING CORP.,

Plaintiff,

Index No. 650873/2014

-against-

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, CNA INSURANCE COMPANIES, and W.L. LANDAU CARRIAGE HOUSE ROCKLAND, INC.,

Defendants.

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ROBERT R. REED, J.:

This is an action for a declaratory judgment and damages in which plaintiff seeks a declaration regarding the obligations of defendant National Fire Insurance Company of Hartford (National) under an insurance policy National issued to W.L. Landau Carriage House Rockland, Inc. (W.L. Landau). Plaintiff claims it is entitled to additional insured status under the National policy with respect to a bodily injury claim brought by nonparty Luisa Ladika. Plaintiff now moves for summary judgment for a judicial declaration that National is obligated to defend and indemnify it in the underlying accident. Plaintiff also moves for default judgment against defendant W.L. Landau.

Background

This matter arises out of an underlying personal injury action captioned *Ladika v. Tara-59 Holding Corp. et ano.*, Index No. 35854/2012, venued in Rockland County Supreme Court. The complaint in the underlying action alleges that Ladika tripped and fell in a parking lot owned

by defendant Tara but leased to defendant W.L. Landau.

Under the lease (Lease) between plaintiff and W.L. Landau, W.L. Landau shall maintain general liability insurance relative to the premises with limits of at least two million dollars ($2,000,000.00) per occurrence. The Lease provides that the landlord shall be named as an additional insured. W.L. Landau thereafter obtained a general liability policy from National, effective July 24, 2011 to July 24, 2012 (National Policy). Plaintiff also obtained general liability insurance from Property and Casualty Insurance Company of Hartford (Hartford).

Upon receipt of the summons and complaint in the underlying action, plaintiff forwarded the papers to Hartford. Hartford wrote to W.L. Landau, in a letter dated May 15, 2012, tendering to them the defense and indemnification of plaintiff, and requesting that the papers be forwarded to their insurance carrier. In a letter dated April 10, 2013, National denied the claim.

Plaintiff now moves for summary judgment for a judicial declaration that National is obligated to defend and indemnify it in the underlying accident. As stated, National does not attempt to deny that plaintiff is an additional insured. Rather, it argues, first, that it does not owe plaintiff all of its defense costs because plaintiff has its own insurance policy with Hartford, and, second, that the motion is defective due to the failure to provide legal bills in order to prove "which amounts were incurred at which point and the reasonableness thereof."

Discussion

Summary judgment is a "drastic remedy"(*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503). "[T]he 'proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70

AD3d 508, 510, quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853. Once the proponent of the motion meets this requirement, "the burden then shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial" (*Ostrov v Rozbruch*, 91 AD3d 147, 152, citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224).

"In resolving insurance disputes, we first look to the language of the applicable policies" (*Fieldston Prop. Owners Assn., Inc. v Hermitage Ins. Co., Inc.*, 16 NY3d 257, 264). It is the duty of the court to determine "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).

The National Policy clearly covers plaintiff as an additional insured. The issues here are resolved indisputably by *Pecker Iron Works of N.Y. v Traveler's Ins. Co.* (99 NY2d 391 [2003]). In *Pecker*, the Court held that "'[a]dditional insured' is a recognized term in insurance contracts, with an understanding crucial to our conclusion in this case. As cases have recognized, the well-understood meaning of the term is an entity enjoying the same protection as the named insured [internal quotation marks and citation omitted]" (*id.* at 393; *see also Kassis v Ohio Cas. Ins. Co.*, 12 NY3d 595, 599-560).

As a result of the foregoing, National is obligated to take over the defense of plaintiff in the underlying action, and to recompense plaintiff for all costs and expenses it outlaid in defending the underlying action, but only as to those costs and expenses which arose after the

date upon which National refused to defend plaintiff, that is, April 10, 2013 (*see National Union Fire Ins. Co. of Pittsburgh, PA v Greenwich Ins. Co.*, 103 AD3d 473, 474) ("'[i]n the event of a breach of the insurer's duty to defend, the insured's damages are the expenses reasonably incurred by it in defending the action after the carrier's refusal to do so'" [quoting *Sucrest Corp. v Fisher Governor Co.*, 83 Misc 2d 394, 407, *affd* 56 AD2d 564]). The costs and expenses incurred by plaintiff in defending the underlying action before that date are its own obligation (*id.*). Plaintiff was not obligated to provide proof of legal bills and of other expenses on this motion. This is an action for a judicial declaration of plaintiff's rights, not an action for damages.

Plaintiff's motion for a default judgment against W.L. Landau is denied. A prima facie case for a default judgment is evidenced by "proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of those defendants' failure to answer or appear . . . " (*Citimortgage, Inc. v Chow Ming Tung*, 126 AD3d 841, 843). Here, assuming the existence of affidavits of service, which are not here at hand, plaintiff has not proven prima facie that it has stated a claim against this defendant, because it has been determined here that defendant W.L. Landau did obtain the insurance called for under the Lease.

Accordingly, it is

ORDERED that the motion brought by plaintiff is granted in part and denied in part; and it is further

ADJUDGED and DECLARED that defendant National Fire Insurance Company of Hartford is obligated to defend and indemnify plaintiff in the underlying action entitled *Ladika v. Tara-59 Holding Corp. et ano.*, Index No. 35854/2012, pending in Supreme Court, Rockland

County; and it is further

ORDERED that that part of plaintiff's motion which seeks a default judgment against defendant W.L. Landau is denied.

Dated: March 20, 2017

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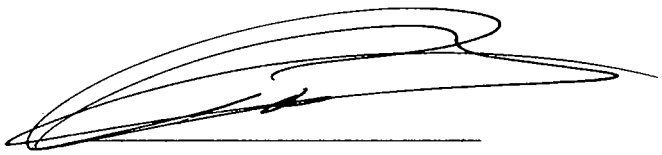

J.S.C.