

**Granirer v Bakery, Inc.**

2010 NY Slip Op 32624(U)

September 20, 2010

Supreme Court, New York County

Docket Number: 109915/06

Judge: Barbara R. Kapnick

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

PRESENT: **BARBARA R. KAPNICK**

PART 39

Index Number : 109915/2006

GRANIRER, DAN

vs

BAKERY, INC.

Sequence Number : 005

OTHER

INDEX NO.

109915/06

MOTION DATE

MOTION SEQ. NO.

005

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
SEP 23 2010  
NEW YORK  
COUNTY CLERKS OFFICE

Dated: 9/20/10

**BARBARA R. KAPNICK**

J.S.C.

Check one  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IA PART 39

-----x  
DAN GRANIRER and KEIKO HONDA,

Plaintiffs,

-against-

THE BAKERY, INC.,

Defendant.

**DECISION/ORDER**  
Index No. 109915/06  
Action No. 1  
Motion Seq. No. 005

-----x  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
-----x

DAN GRANIRER and KEIKO HONDA,

Plaintiffs,

-against-

THE AUTOMOBILE INSURANCE COMPANY OF  
HARTFORD, CONNECTICUT, ST. PAUL  
TRAVELERS and THE TRAVELERS  
PROPERTY CASUALTY COMPANIES,  
subsidiaries of The St. Paul  
Travelers Insurance Companies, Inc.  
and THE ST. PAUL TRAVELERS INSURANCE  
COMPANIES, INC.,

Defendants.

-----x  
**BARBARA R. KAPNICK, J.:**

**FILED**  
SEP 23 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiffs Dan Granirer and Keiko Honda move for an order declaring that pursuant to the terms of their homeowners' insurance policy and subsequent renewal policies, The Automobile Insurance Company of Hartford, Connecticut, St. Paul Travelers and The Travelers Property Casualty Companies, subsidiaries of The St. Paul Travelers Insurance Companies, Inc., and The St. Paul Travelers Insurance Companies, Inc., the defendants in Action No. 2, are obligated to: (i) reimburse plaintiffs for the alternate housing

and increased living expenses they incurred as a result of their constructive eviction from the apartment located at 521 West 47<sup>th</sup> Street, New York, New York (the "Apartment"); and (ii) pay plaintiffs' alternate housing and increased living expenses on an ongoing basis so that plaintiffs may maintain their normal standard of living until such time as the apartment is restored and made habitable.<sup>1</sup>

Pursuant to Stipulation of Settlement dated October 18, 2006, the parties resolved a prior Order to Show Cause for declaratory relief brought in Action No. 2 (Index No. 114206/06) by agreeing, in relevant part, as follows:

3. Plaintiffs withdraw the Complaint and discontinue this action without prejudice. Upon compliance with the terms and conditions of this Stipulation of Settlement, the Complaint will be deemed withdrawn and this action

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<sup>1</sup> The policy provides, in relevant part, as follows:

COVERAGE D LOSS OF USE

The limit of liability for Coverage D is the total limit for all the following coverages.

**1. Additional Living Expense.** If a loss covered under this Section makes the **residence premises** uninhabitable, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living. PAYMENT SHALL BE FOR THE SHORTEST TIME REQUIRED TO REPAIR OR REPLACE THE PREMISES OR, IF YOU PERMANENTLY RELOCATE, THE SHORTEST TIME REQUIRED FOR YOUR HOUSEHOLD TO SETTLE ELSEWHERE. This period of time is not limited by expiration of this policy.

discontinued, *with prejudice* (emphasis supplied), except as otherwise provided herein.

4. On or about October 31, 2006, defendant The Automobile Insurance Company of Hartford, Connecticut ("AICH") shall pay to Plaintiffs the sum of **\$31,892.73** by delivering a check made payable to Dan Granirer and Keiko Hond to Plaintiffs' undersigned attorneys... The parties acknowledge that said \$31,892.73 represents a portion of Plaintiffs' out-of-pocket increased living expenses that are the subject of this action...

5. AICH further agrees to subsequently reimburse Plaintiffs for their alternate housing and increased living expenses on an ongoing basis so that Plaintiffs may maintain their normal standard of living until such time as the roofs at the Building are repaired, the leaks in the Apartment are eliminated, the mold in the Apartment is remediated and the Apartment is made habitable but *in no event shall said reimbursement exceed the aggregate sum of \$53,500.00 (the limit of liability associated with a Coverage D Loss of Use under Plaintiffs' homeowners' insurance policy, ...)* [emphasis supplied].

Defendants argue that the instant Order to Show Cause must be denied because AICH has already paid the plaintiffs the full policy limit of \$53,500.00, which plaintiffs acknowledged in the Stipulation of Settlement was the maximum amount recoverable.

Plaintiffs, however, contend that the Stipulation of Settlement covers the policy period of January 3, 2006 through January 3, 2007 only. They contend that they are entitled to additional living expenses coverage for subsequent periods because defendants issued renewal policies to plaintiff with knowledge that the Apartment was still not habitable.

Plaintiffs argue that each renewal policy is considered a new or separate policy under New York law (see, *Matter of Midland Ins. Co.*, 269 AD2d 50 [1st Dep't 2000]), and thus gives rise to new policy limits on alternate living expenses.

However, the Stipulation of Settlement did not include any language with respect to further claims by plaintiffs for additional living expenses, nor did it limit the scope of the additional living expenses to expenses incurred in 2006.

Moreover, this Court finds that plaintiffs' additional living expenses claim arises out of the initial 2006 loss. Thus, although plaintiffs continued to incur additional expenses after the initial policy period, plaintiffs are limited to the \$53,500.00 policy limit for that loss. See, *Ramirez v Allstate Ins. Co.*, 26 AD3d 266 (1st Dep't 2006).

Accordingly, based on the papers submitted and the oral argument held on June 23, 2010, plaintiffs' Order to Show Cause must be denied.

This constitutes the decision and order of the Court.

Dated: September 20, 2010

  
BARBARA R. KAPNICK  
J.S.C.

**FILED**  
SEP 28 2010  
NEW YORK  
COUNTY CLERKS OFFICE

**BARBARA R. KAPNICK**  
J.S.C.