

Admiral Indem. Co. v Ingber
2016 NY Slip Op 31250(U)
July 1, 2016
Supreme Court, New York County
Docket Number: 154275/15
Judge: Barry R. Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : IAS PART 61

 X

ADMIRAL INDEMNITY COMPANY a/s/o
 PARK REGIS APARTMENT CORP.,

Plaintiff,

INDEX NO. 154275/15

-against-

SIDNEY INGBER AND WENDY INGBER and
 ADRIATIC PLUMBING & HEATING CORP.,

Motion Seq. No. 003

Defendants.

 X

OSTRAGER, J:

Presently before the Court is the motion by Sidney Ingber and Wendy Ingber to reargue this Court's May 13, 2016 decision denying the Ingbers' motion for summary judgment dismissing all claims, cross-claims, and counterclaims against them. Reargument is granted, and upon reargument, summary judgment is granted to the extent of severing and dismissing the claims by Admiral Insurance Company as against the Ingbers, but the motion is otherwise denied.

The Ingbers were residents of the building owned by Park Regis Apartment Corp ("Park Regis"). A faulty dishwasher caused damage to Park Regis, and Admiral, as the insurer of Park Regis, paid for the damage Park Regis sustained. The Ingbers' proprietary lease with Park Regis contained a waiver of subrogation provision which operated to prevent Park Regis from asserting a claim against the Ingbers as long as Park Regis had an insurance policy that recognized and accepted the waiver of subrogation provision in the proprietary lease.

Both the proprietary lease and the Admiral policy were attached to the motion for summary judgment but, both at oral argument and in the memorandum of law in support of the motion, counsel for the Ingbers was unable to either quote completely or identify the relevant

portion of the Admiral policy relating to Admiral's waiver of subrogation. Consequently, the Court overlooked the provision of the Admiral policy that entitled the Ingbers to summary judgment and denied the motion.

On reargument, counsel for the Ingbers has demonstrated that Admiral's rights as subrogee are no greater than the rights of Park Regis vis-à-vis the Ingbers and, because Park Regis waived its subrogation rights against the Ingbers, Admiral has no right to proceed against the Ingbers. Thus, the Ingbers are entitled to summary judgment dismissing Admiral's claims against them. However, Admiral is entitled to proceed with its subrogation claim against defendant Adriatic Plumbing & Heating Corp. Further, Adriatic correctly argues that the Ingbers have failed to establish their right to the dismissal of Adriatic's cross-claims against the Ingbers. To the extent the Ingbers also seek the dismissal of any counterclaims asserted against them, that request for relief is also denied, as no counterclaims have been identified nor argument presented on that issue.

Accordingly, it is hereby

ORDERED that the motion by defendants Sidney Ingber and Wendy Ingber to reargue this Court's May 13, 2016 decision denying them summary judgment is granted, and upon reargument, the motion is granted to the extent of directing the Clerk to enter judgment in favor of Sidney Ingber and Wendy Ingber dismissing with prejudice the claims asserted against them by plaintiff Admiral Insurance Company, and the motion is otherwise denied; and it is further

ORDERED that the cross-claims asserted by Adriatic Plumbing & Heating Corp. against the Ingber defendants shall continue in the form of a third-party action by Adriatic against the Ingbers and Adriatic shall, within ten days of the date of this order, efile a third-party complaint; and it is further

ORDERED that upon the service of a copy of this decision on the Clerk in Room 119 the caption of this action shall be amended to read as follows:

_____ X

ADMIRAL INDEMNITY COMPANY a/s/o
PARK REGIS APARTMENT CORP.,
Plaintiff,

-against-

ADRIATIC PLUMBING & HEATING CORP.,
Defendant.

_____ X

_____ X

SIDNEY INGBER AND WENDY INGBER,
Third-Party Plaintiff,

-against-

KENWAY CONSTRUCTION,
Third-Party Defendant.

_____ X

_____ X

ADRIATIC PLUMBING & HEATING CORP.,
Second Third-Party Plaintiff,

-against-

SIDNEY INGBER AND WENDY INGBER,
Second Third-Party Defendants.

_____ X

[*4]
And it is further

ORDERED that all parties or their counsel shall appear on July 20, 2016 at 9:30 a.m. as previously scheduled for a status conference.

Dated: July 1, 2016



BARRY R. OSTRAGER
J.S.C.
JSC