

**Beekman Regent Condominium Assn. v Greater
N.Y. Mut. Ins. Co.**

2007 NY Slip Op 30289(U)

March 7, 2007

Supreme Court, New York County

Docket Number: 0602151

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
Justice

PART _____

Index Number : 602151/2006
BEEKMAN REGENT CONDOMINIUM
vs
GREATER NEW YORK INC. CO.
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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
THE ACCOMPANYING MEMORANDUM DECISION.**

[FILED]

MAR 19 2007

COUNTY CLERK
NEW YORK

Dated: 3/07/07

J. GISCHE
HON. JUDITH J. GISCHE
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
The Beekman Regent Condominium
Association and Beekman International
Center, LLC

Plaintiffs,

-against-

Greater New York Mutual Insurance Company

Defendant.
-----X

DECISION/ORDER
Index#602151/2006
Mot. Seq. #001

Present:
Hon. Judith J. Gische
J.S.C.

Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

| PAPERS | NUMBERED |
|--|-----------------|
| Amended Notice of Motion, FBO affirm., exhibits..... | 1 |
| DH affidavit, exhibits..... | 2 |
| Supp/ Reply Affirm., exhibit..... | 3 |

FILED
MAR 15 2007
COUNTY CLERK
NEW YORK

Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Defendant brings this pre-answer motion to dismiss the complaint based upon documentary evidence and failure to state a cause of action. CPLR §3211(a)(1), (7). The complaint is based upon the defendant insurance company's denial of a claim for loss of business and rental income due to water leaks alleged to have occurred on January 16, 2004 and January 22, 2004. This action was commenced on June 20, 2006 by the purchase of an index number and the filing of the summons and complaint. Relying upon the insurance policy in question as documentary evidence, defendant argues that the action should have been, but was not, commenced within 2 years of the date of loss or occurrence. It argues that the action is therefore time barred. It also

argues that the loss of business and rental income is not a covered loss under the policy.

Plaintiffs do not dispute that the insurance policy in question provides a two year limitations period and this claim was not interposed until after the two year period elapsed. It recognizes the general rule of law that a shortened limitations period set forth in an insurance policy is enforceable. Kaufman v. Republic Insurance Company, 35 NY2d 867 (1974); Carnegie Hill 90th Street Inc. V. Greater New York Mutual Insurance Co., 271 AD2d 333 (1st dept. 2000). It argues that under the facts of this case, the two year limitations period should not be enforced against it. The specific facts that it relies upon are that the applicable clause is "buried" in a voluminous document; it is unsure whether anyone at plaintiff ever received the entire document; that the insurance company continued to negotiate with it over whether the claim would be paid and that the insurance company never notified plaintiff about the shorter limitations period.

The court rejects plaintiffs' argument and holds that the claims interposed are time barred. Plaintiff is a commercially savvy business and it is presumed to know the contents of contracts that it enters into, including insurance policies. Speculation about whether it had the full policy notwithstanding, plaintiff had the opportunity to either search for the policy in its own files or demand a copy thereof before the expiration of the limitations period. During the ongoing negotiations between the parties, defendant did not lull plaintiffs into any belief that the matter would be settled, nor did it induce them into foregoing any limitations period. The insurance company did not have an affirmative obligation to notify or remind plaintiff to sue it in court on a timely basis.

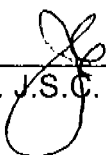
Because the court finds that the action is time barred, it does not reach the alternative issue about whether the insurance policy covers the requested loss.

Accordingly the motion to dismiss is granted.

Any requested relief not expressly granted herein is denied. This constitutes the decision and order of the court.

Dated: New York, New York
March 7, 2007

So Ordered:



J.G. J.S.C.

FILED
MAR 19 2007
COUNTY CLERK
NEW YORK