

Sui Har Mar v Graphic Arts Mut. Ins. Co.

2007 NY Slip Op 30740(U)

April 10, 2007

Supreme Court, New York County

Docket Number: 0114358/2005

Judge: Evelyn L. Braun

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

PRESENT: Richard F. Brown

PART 22

Index Number : 114358/2005

MAR, SUI HAR et al.

INDEX NO. _____

vs
GRAPHIC ARTS MUTUAL INSURANCE Co. et al.

MOTION DATE 9/14/06

Sequence Number : 001

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this motion ~~to~~ for Summary judgment

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

PAPERS NUMBERED

1

2

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted to the extent of declaring
that defendant Graphic Arts Mutual Insurance Co. is the wrongdoer of plaintiff
Mar Sui Har, and it is ORDERED that the Clerk shall enter judgment accordingly.
This constitutes the decision and order
of this Court. See separate Opinion.

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

FILED
APR 16 2007
COUNTY CLERK'S OFFICE
NEW YORK

ENTER

Dated: New York, New York, April 9, 2007 _____ J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

----- X
SUI HAR MAR and PUBLIC SERVICE MUTUAL
INSURANCE COMPANY,

Index No. 114358/05

OPINION

Plaintiffs,

-against-

GRAPHIC ARTS MUTUAL INSURANCE CO.
and LION KING'S PRINTING, INC.,

Defendants.
----- X

RICHARD F. BRAUN, J.:

This is an action for a declaratory judgment. Plaintiffs move for summary judgment declaring that defendant Graphic Arts Mutual Insurance Co. (Graphic) was obligated to defend and indemnify plaintiff Sui Har Mar , dismissing any cross claims (there are none), and scheduling an assessment of damages. Defendant Graphic separately moves for summary judgment declaring that it has no duty to defend or indemnify. Defendant Lion King's Printing, Inc. (Lion King's) cross-moves for summary judgment.

A party moving for summary judgment must demonstrate his, her, or its entitlement thereto as a matter of law, pursuant to CPLR 3212 (b) (*JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 382 [2005]). To defeat summary judgment, the party opposing the motion must show that there is a material question(s) of fact which requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

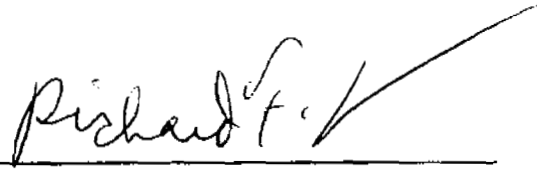
Paragraph 10.1 of the subject lease provides that defendant Lion King's would keep in full force and effect a public liability insurance policy, and paragraph 10.5 provides that plaintiff Sui Har Mar would be named an insured under the policy. Paragraph C.5 of defendant Graphic's business

owners liability form provides that “[a]ny ... organization with whom you have entered into a written contract, agreement ... requiring you to provide insurance such as is afforded by this Businessowners Liability Coverage Form will be an additional insured, but only with respect to liability arising out of your ongoing operations, ‘your work,’ or property owned or used by, or rented or leased to, you.” Thus, defendant Graphic was the insurer of plaintiff Sui Har Mar, and, as requested in the first paragraph of the wherefore clause of the complaint, a declaration has been issued to that effect.

The claims in the underlying action arose due to the plaintiff William Kelly therein tripping over a bicycle in the stairway of the separate residential part of the subject building. The accident did not occur in the premises of defendant Lion King’s nor did the accident arise out of the operations or work of said defendant. Therefore, the accident was not covered by defendant Graphic’s insurance policy (*see Greater N.Y. Mut. Ins. Co. v Mutual Mar. Off.*, 3 AD3d 44, 47-48 [1st Dept 2003]; *Light v Martin Corp.*, 235 AD2d 363, 364 [1st Dept 1997]; *General Acc. Fire & Life Assur. Corp. v Travelers Ins. Co.*, 162 AD2d 130, 131-132 [1st Dept 1990]; *cf. Maroney v New York Cent. Mut. Fire Ins. Co.*, 5 NY3d 467, 472-473 [2005] [where the Court held that no defense or indemnification was owed to the insured because of the uninsured premises exclusion of the insurance policy]). Therefore, the court has declared that defendant Graphic is not obligated to defend plaintiff Sui Har Mar (in any event, as the underlying case has settled, the obligation to defend had ended); indemnify plaintiffs; or pay damages, costs, expenses, legal fees, disbursements, or defense costs in the underlying action. The request for a declaration as to the policy issued by defendant Graphic being primary insurance is dismissed as moot (*see Saratoga Chamber of Commerce v Pataki*, 100 NY2d 801, 810-811, 825 [2003]; *Automated Ticket Systems v Quinn*, 90 AD2d 738, 738-739 [1st Dept 1982]).

Therefore, plaintiff's motion has been granted to the extent stated above, and that of defendant Graphic granted to the extent indicated, by this court's separate April 9, 2007 decisions and orders. As no relief is requested as to defendant Lion King's, its cross motion is granted awarding said defendant summary judgment.

Dated: New York, New York
April 10, 2007



RICHARD F. BRAUN, J.S.C.

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