

Skoler v Murray & Vito Serv. Sta., Inc.
2007 NY Slip Op 30744(U)
April 11, 2007
Supreme Court, New York County
Docket Number: 0116717/2005
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT **BARBARA R. KAPNICK**

PART 12

Index Number : 116717/2005

SKOLER, MILDRED

vs

BRIDGE VIEW AUTO SERVICE

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO.

116717/05

MOTION DATE

MOTION SEQ. NO.

003

MOTION CAL. NO.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

FILED

APR 16 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/11/07

BARBARA R. KAPNICK J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
MILDRED SKOLER and SHELDON SKOLER,

Plaintiffs,

DECISION/ORDER
Index No. 116717/05
Motion Seq. No. 003

-against-

MURRAY & VITO SERVICE STATION, INC., and
BRIDGE VIEW AUTO SERVICE CENTER, INC.,

Defendants.

-----X
MURRAY & VITO SERVICE STATION, INC.,

Third-Party Plaintiff,

Third-Party
Index No. 590233/06

-against-

ZHI QUING MEI, US UNDERWRITERS INSURANCE
COMPANY, IMPERIAL A.I. CREDIT COMPANIES,
INC., JDM BROKERAGE CORP., and JAMES MILEFEW,

Third-Party Defendants.

-----X
BARBARA R. KAPNICK, J.:

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

In this action, plaintiffs seek to recover damages for personal injuries sustained by plaintiff Mildred Skoler on May 24, 2004 after stepping into a hole or depression in the curbcut portion of the sidewalk in front of the building located at 26 Forsyth Street in Manhattan, which was owned by defendant/third-party plaintiff Murray & Vito Service Station, Inc. ("M&V") and leased to defendant Bridge View Auto Service Center, Inc. ("Bridge View") and third-party defendant Zhi Quing Mei.

There is no dispute that third-party defendant US Underwriters Insurance Company ("US Underwriters") issued a commercial general

liability policy of insurance (CL3057713A) to Bridge View for the policy period of November 6, 2003 to November 6, 2004.¹

Defendant/third-party plaintiff M&V contends that it is an 'additional insured' under that policy as reflected on the ACORD Certificate of Liability Insurance, and seeks in the third-party action, inter alia, a judgment declaring that third-party defendant US Underwriters is obligated to defend and indemnify it, and is liable for the defense costs expended by it in the main action.

Third-party defendant US Underwriters now moves for an order:

(1) granting summary judgment dismissing the third-party complaint against it and issuing a declaration that U.S. Underwriters is not obligated to defend or indemnify third-party plaintiff M&V with respect to the main action, on the grounds that M&V is not an insured or additional insured under the policy issued to Bridge View; and

(2) dismissing the third-party complaint against it on the grounds that M&V does not have standing to sue it because no judgment has been entered against its insured, i.e., Bridge View. See, Lang v. Hanover Insur. Co., 3 N.Y.3d 350 (2004); Insurance Law § 3420.

In opposition to the motion, M&V annexes the ACORD Certificate of Liability Insurance purportedly issued by third-party defendant

¹ This was a renewal of Policy No. CL3057713.

JDM Brokerage Corp., which lists M&V as an additional insured to policy number CL3057713.

US Underwriters, however, contends that it did not authorize the issuance of the Certificate and claims that the policy was renewed and superseded by policy number CL3057713A. US Underwriters further contends that M&V was not an additional insured on either the initial or renewal policy which was in effect on the date of the plaintiff's accident.

"The certificate of insurance is evidence of the insurer's intent to provide coverage, but it is not a contract to insure [M&V], nor is it conclusive proof, standing alone, that such a contract exists (citations omitted)." Buccini v. 1568 Broadway Associates, 250 A.D.2d 466, 469-470 (1st Dep't 1998).

In the instant case, the Certificate specifically provides as follows:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Absent any evidence that the policy afforded coverage to Bridge View, summary judgment is appropriate in this case. See, Sixty Sutton Corp. v. Illinois Union Insurance Co., 34 A.D.3d 386 (1st Dep't 2006); American Motorist Insur. Co. v. Superior Acoustics Inc., 277 A.D.2d 97 (1st Dep't 2000).

Accordingly, based on the papers submitted and the oral argument held on the record on January 10, 2007, third-party defendant US Underwriter's motion is granted, and it is hereby

ORDERED and ADJUDGED that US Underwriters is not obligated to defend or indemnify third-party plaintiff with respect to the main action, and it is further

ORDERED that the Clerk may enter judgment dismissing the third-party Complaint against defendant US Underwriters Insurance Company only with prejudice and without costs or disbursements.

The remainder of the action is severed and continued.

Counsel for all remaining parties are directed to appear for a preliminary conference in IA Part 12, 60 Centre Street, Room 341 on May 2, 2007 at 9:30 a.m. to schedule discovery.

This constitutes the decision and order of this Court.

Dated: April 11, 2007



Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
APR 16 2007
NEW YORK
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