

**Federal Ins. Co. v Samuel Aaron, Inc.**

2007 NY Slip Op 31804(U)

June 21, 2007

Supreme Court, New York County

Docket Number: 0108256/2006

Judge: Walter Tolub

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

PRESENT: **WALTER B. TOLUB**

PART \_\_\_\_\_

*Justice*

Index Number : 108256/2006  
FEDERAL INSURANCE COMPANY  
vs  
SAMUEL AARON, INC.  
Sequence Number : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

the following papers: \_\_\_\_\_ 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

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IS DECIDE  
IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**

JUN 25 2007

COURT CLERK'S OFFICE  
NEW YORK

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

Dated: <sup>6/21/07</sup> **WALTER B. TOLUB**

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
FEDERAL INSURANCE COMPANY a/s/o  
COOLWEAR, INC.

Plaintiff,

Index No. 108256/06  
Mtn Seq. 002

-against-

SAMUEL AARON, INC., and A-ARON SECURITY  
SERVICES, INC., d/b/a AAROW SECURITY  
PATROLS,

Defendants.

-----x  
A-ARON SECURITY SERVICES, INC., d/b/a  
AAROW SECURITY PATROLS,

Third-Party Plaintiff,

-against-

31-00 47<sup>th</sup> AVENUE LLC, IMPERIAL FIRE  
PROTECTION SYSTEMS, INC., and KND  
MANAGEMENT CO., INC.,

Third-Party Defendant  
-----x

**FILED**

JUN 25 2007

CLERK OF THE COURT  
JULIUS ROSENBLUTH

**WALTER B. TOLUB, J.:**

By this motion Defendant, Imperial Fire Protection Systems, Inc., ("Imperial"), moves for an order granting summary judgment dismissing the Third-Party Complaint of A-Aron Security Services, Inc., d/b/a Aarow Security Patrols, along with all cross-claims and counter claims. Imperial's motion is granted in its entirety.

Facts

This action arises out of property damage sustained as a result of a fire that occurred on the premises located at 31-00

47<sup>th</sup> Avenue, Long Island City, New York on February 22, 2005 to the early morning hours of February 23, 2005. Defendant Imperial was impleaded into this action by A-Aron Security, whose Complaint alleges, inter alia, that Plaintiff was damaged by Imperial's negligence and recklessness.

Imperial, however, had no involvement with the premises until March 1, 2005, when it was first contacted via service call to work on the fire alarm system. (Imperial Ex. D). Subsequently, on July 20, 2005, Imperial signed a service contract to maintain the fire alarm system (Imperial Ex. E).

#### Discussion

Summary judgment is appropriate in the absence of any material questions of fact and a prima facie showing of entitlement as a matter of law. (Winegrad v. New York Univ. Med. Center, 64 NY2d 851 [1985]). To defeat the motion, the opponent must produce evidentiary proof in admissible form that establishes the existence of a material question of fact. (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]).

Here, A-Aron Security argues that this motion for summary judgment is premature as no depositions have been held. However, the evidence demonstrates the absence of material questions of fact as to any involvement by Imperial to Plaintiff's property damage. Courts do not permit a "fishing expedition" in an attempt to fashion a viable cause of action where none exists.

(Auerbach v. Bennett, 47 NY2d 619 [1979]). Therefore, where as here, the parties have not demonstrated a viable cause of action against a party, summary judgment may be granted even though discovery is not complete. (Andre v. Pomeroy, 35 NY2d 361 [1974]).

Accordingly, it is

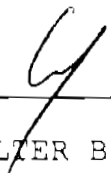
ORDERED that Imperial's motion for summary judgment is granted and the complaint and all cross-claims and counter-claims are dismissed against it, and the Clerk is directed to enter judgment in favor of Imperial; and it is further

ORDERED that the remainder of the action shall continue.

Counsel for the parties are directed to appear for a compliance conference on August 17, 2007 at 11:00 a.m in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 6/21/07

  
\_\_\_\_\_  
HON. WALTER B. TOLUB, J.S.C.

**FILED**  
JUN 25 2007