

Chubb & Son v 31-00 47th Ave. LLC

2007 NY Slip Op 31843(U)

June 22, 2007

Supreme Court, New York County

Docket Number: 0110088/2005

Judge: Walter Tolub

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SCANNED ON 6/27/2007
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: _____

PART _____

Index Number : 110088/2005

CHUBB & SON

vs

31-00 47TH AVENUE

Sequence Number : 001

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this 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Upon the foregoing papers, it is ordered that this motion is withdrawn

per movant. Third-Party defendant, Imperial Fire Protection Systems, Inc.'s motion is granted in accordance with the accompanying memorandum decision.

FILED
JUN 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/21/07
~~5/9/07~~

[Signature]
WALTER B. TOLUB s.c.

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

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

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

-----x
CHUBB & SON, MANAGER OF FEDERAL INSURANCE
COMPANY a/s/o SAMUEL AARON, Inc.,

Plaintiff,

Index No. 11088/05
Mtn Seq. 001

-against-

31-00 47th AVENUE LLC and A-Aron SECURITY
SERVICE, INC., d/b/a AAROW SECURITY
PATROLS and IMPERIAL FIRE PROTECTION
SERVICES, INC.,,

Defendants.

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

Third-Party Plaintiff,

-against-

IMPERIAL FIRE PROTECTION SYSTEMS, INC.,

Third-Party Defendant

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

Second Third-Party Plaintiff,

-against-

KDN MANAGEMENT CO., Inc.,

Second Third-Party Defendant

-----x
WALTER B. TOLUB, J.:

By this cross-motion Defendant, Imperial Fire Protection
Systems, Inc., ("Imperial"), moves for an order granting summary
judgment dismissing the Third-Party Complaint of Chubb & Sons,
Manager of Federal Insurance Company a/s/o Samuel Aaron, Inc.,

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along with all cross-claims and counter claims. Imperial's motion is granted in its entirety. The initial motion for summary judgment was withdrawn on April 25, 2007 by the movant.

Facts

This action arises out of property damage sustained as a result of a fire that occurred on the premises located at 31-00 47th 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 Verified Third-Party Summons and Complaint which 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. E). Subsequently, on July 20, 2005, Imperial signed a service contract to maintain the fire alarm system (Imperial Ex. F).

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]).

[* 4]

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:

6/22/07

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JUN 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

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