

Steadfast Ins. Co. v Casden Props., Inc.

2007 NY Slip Op 31889(U)

June 26, 2007

Supreme Court, New York County

Docket Number: 0602048/2003

Judge: Edward H. Lehner

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

EDWARD H. LEHNER

PRESENT

PART 19

Index Number : 602048/2003

STEADFAST INSURANCE

INDEX NO. _____

VS

CASDEN PROPERTIES

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. 002

STRIKE A PLEADING

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 ...

PAPERS NUMBERED

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 accompanying memorandum decision

FILED

JUN 29 2007

NEW YORK COUNTY CLERK'S OFFICE

JUN 26 2007

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: 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 19

Steadfast Insurance Company,

Plaintiff,

-against-

Index No.
602048/03

Casden Properties, Inc., LAC Properties QRS III, Inc.,
Hapi Management, Inc., Wilkes Towers, Ltd., Wilkes
Towers, Inc. and WT, Inc.,

Defendants.

Casden Properties, Inc., LAC Properties QRS III, Inc.,
Hapi Management, Inc., Wilkes Towers Limited
Partnership,

Third-Party Plaintiffs,

-against-

Index No.
591139/04

The Rubin Group and Speciality Risk
Services,

Third-Party Defendants.

LEHNER, EDWARD H., J.:

Motions bearing sequence #002 and #006 are consolidated herein for
disposition.

This is an action for declaratory relief wherein plaintiff Steadfast Insurance

FILED
JUN 29 2007
NEW YORK
COUNTY CLERK'S OFFICE

Company seeks judgment permitting it to disclaim insurance coverage relative to a loss sustained by defendant Casden Properties, Inc. ("Casden") resulting from a fire in 2001.

Plaintiff has principally contended that it did not receive timely notice of the loss from its insured. The court, in its decision and order of May 18, 2006, determined that, inasmuch as California law applied to the interpretation of the terms of the insurance policy at issue, plaintiff could not disclaim coverage under the policy it issued to Casden unless the plaintiff could demonstrate the existence of *actual prejudice* as the result of any delay in notice to it. The decision and order of the court has been affirmed by the First Department, ___ AD3d ___, 2007 WL1599138.

Defendants/third-party plaintiffs move (seq.#002) to compel plaintiff and third-party defendant Speciality Risk Services (hereinafter SRS) to comply with its outstanding discovery notices. Movants further seek sanctions (CPLR §3126) with

respect to the plaintiff by reason of its failure to comply with the court's direction relative to the production of a knowledgeable witness with regard to the relationship between it and SRS (seq. #006). It is noted that the movants have premised their entitlement to the above- noted discovery upon their contention that plaintiff had notice of the insured's loss as the result of its relationship with SRS.

The court finds that at the present time the relationship as between the plaintiff and SRS is of little relevance to this action inasmuch as the plaintiff in this action can only disclaim coverage relative to the insured's loss if it can demonstrate actual prejudice as the result of any delay on the part of the insured in notifying it of the loss sustained. The Appellate Division has ruled that actual prejudice is not presumed from a delayed notice alone.

In view of the foregoing, the court finds that the discovery sought by the defendant is not material and necessary with respect to the defense of the action

within the meaning of CPLR §3101(a). Accordingly, the motions by the defendants/third party plaintiffs are denied.

The court in its decision and order of May 18, 2006 granted leave to the plaintiff to re-plead its complaint in accordance with California law. The court herewith sua sponte modifies said decision and order to the extent of dismissing this action unless the plaintiff serves its amended complaint in accordance with the aforementioned direction of the court within thirty days after service of a copy of this order together with notice of entry. Service of any responsive pleadings shall be effected as per CPLR §3025 (d).

This constitutes the decision and order of the court.

Dated: June 26, 2007



J.S.C.

FILED
JUN 29 2007
NEW YORK
COUNTY CLERK'S OFFICE