

Smith v State Farm Fire & Cas. Co.

2007 NY Slip Op 32796(U)

August 31, 2007

Supreme Court, Suffolk County

Docket Number: 0002874/2007

Judge: Melvyn Tanenbaum

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XIII SUFFOLK COUNTY**

PRESENT:

Hon. MELVYN TANENBAUM
Justice

MOTION #001, 002 - CASE DISP

R/D: 051107

S/D 072507

ANDREA SMITH

PLTF'S/PET'S ATTY:
THOMAS PIETRANTONIO, P.C.
334 Main Street
Port Washington, New York 11050

Plaintiff,

- against -

STATE FARM FIRE AND CASUALTY COMPANY a/k/a
STATE FARM INSURANCE COMPANIES, THE PUBLIC
ADMINISTRATOR OF SUFFOLK COUNTY ON BEHALF
OF THE ESTATE OF LEONARD SMITH, and ELIZABETH
SMITH,

DEFT'S/RESP'S ATTY:
SARETSKY KATZ DRANOFF
475 Park Avenue South, 26th Floor
New York, New York 10016

Defendants.

Upon the following papers numbered 1 to 36 read on this motion for an order pursuant to CPLR §

_____ Notice of
Motion/Order to Show Cause and supporting papers 1-10 ; Notice of Cross Motion and supporting papers 11-34 Answering
Affidavits and supporting papers 35-36 Replying Affidavits and supporting papers _____ Other _____
_____ ; (and after hearing counsel in support and opposed to the motion)

This motion by defendant STATE FARM FIRE AND CASUALTY COMPANY ("STATE FARM") for an order pursuant to CPLR Section 3212 granting summary judgment dismissing plaintiff's declaratory judgment complaint and the cross motion by plaintiff ANDREA SMITH ("SMITH") for an order pursuant to CPLR Sections 3212 & 3215 granting summary judgment against defendant "STATE FARM" and a default judgment against defendant THE PUBLIC ADMINISTRATOR OF SUFFOLK COUNTY ON BEHALF OF THE ESTATE OF LEONARD SMITH AND ELIZABETH SMITH are determined as follows:

On January 25, 2003 plaintiff "SMITH" was bitten by a dog owned by LEONARD SMITH and ELIZABETH SMITH. Plaintiff was the daughter-in-law of the defendants "SMITHS" and was residing in the defendants household when the incident occurred. Defendant "STATE FARM" issued a homeowners policy insuring defendants' premises.

In September, 2004 plaintiff commenced a personal injury action against defendants "SMITHS". The insurer "STATE FARM" disclaimed coverage under "SMITHS" policy based upon a "resident relative exclusion" which excludes coverage for bodily injury to a relative of an insured who resides in the insured's household. Plaintiff's declaratory judgment action seeking to compel "STATE FARM" to indemnify

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plaintiff in the underlying negligence action was dismissed for lack of standing by Order (Werner, J.) dated July 3, 2006. Plaintiff thereafter obtained a judgment dated October 24, 2006 against defendants "SMITHS" for \$309,958.00 (Index # 25071/2003) and commenced this declaratory judgment action (2874/2007) seeking a judgment declaring that "STATE FARM" is obligated to provide indemnification and coverage for the judgment entered against the "SMITHS".

In support of the summary judgment motion, defendant "STATE FARM" submits two affirmations of counsel and claims that the policy explicitly excludes coverage for bodily injury that is sustained by an insured and defines an insured as including relatives who are residents of the household. It is defendant's position that since ANDREA SMITH is the daughter-in-law of the primary household residents, coverage is excluded under the policy. Defendant maintains that the policy language is unambiguous and clear and no basis exists to compel the insurer to indemnify the plaintiff under these circumstances.

In opposition and in support of her cross motion, plaintiff submits an attorney's affirmation and claims that summary judgment must be granted in "SMITH's" favor since the policy language is ambiguous and must be narrowly construed to provide coverage for "SMITH's" injuries. Plaintiff contends that the policy does not provide a definition of the term "relative" and the insurer cannot therefore exclude liability coverage absent a precise definition which would include an in-law. Plaintiff claims that New York law require that an ambiguous insurance policy provision be interpreted in favor of an insured to allow for coverage in these circumstances.

In constructing the terms of a contract, the judicial function is to give effect to the parties intentions (MALLAD CONSTRUCTION CORP. v. COUNTY FEDERAL SAVINGS & LOAN ASSOCIATION, 32 NY2d 285, 344 NYS2d 925 (1973)). In interpreting a contract, the court must give all the provisions of the contract a reasonable meaning and due consideration must be given to the purpose of the parties in making the agreement (SELIGMAN v. MOUNT ARAFAT CEMETERY, INC., 112 AD2d 928, 492 NYS2d 445 (2nd Dept., 1985)). An agreement should be read as a whole so as to give each section meaning. Where a contract's language admits of only one reasonable interpretation, the court need not look to extrinsic evidence of parties intent or to rules of construction to ascertain the contract's meaning (BETHLEHEM STEEL CO. v. TURNER CONSTRUCTION CO., 2 NY2d 456, 161 NYS2d 90 (1957)). However where the language implied is not free from ambiguity, the intent of the parties becomes a matter of inquiry and consideration must be given to the sense in which the words in issue were used, the relations of the parties and all the surrounding circumstances (See BRAY TERMINALS, INC. v. GRAND UNION CO., 74 AD2d 965, 425 NYS2d 886 (1st Dept., 1980)).

Insurance contracts are liberally construed in favor of the insured and the Court must consider the plain language of the contract as it would be understood by an average or ordinary citizen (MILLER v. CONTINENTAL INS. CO., 40 NY 2d 675, 389 NYS 2d 565 (1976)). The insurer bears the burden of proving that the loss falls within the exclusion and that there is no reasonable interpretation of the exclusion that supports the claim of the insured (SEABOARD SUR. CO. v. GILLETTE CO., 64 NY 2d 304, 486 NYS 2d 873 (1984)). The proper test for determining whether a provision in an insurance policy is ambiguous focuses on "the reasonable expectations of the average insured upon reading the policy and employing common speech." MOSTOW v. STATE FARM INS. CO., 88 NY 2d 321, 326-327 (1996).

The “State Farm/Smith” policy coverage provision provides:

COVERAGE L-PERSONAL LIABILITY

If a claim is made or a suit brought against an insured for damages because of bodily injury or property damage to which this coverage applies; caused by an occurrence, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. Provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to affect settlement or satisfy a judgment resulting from the occurrence, equals our limit of liability.

The “State Farm/Smith” policy exclusion provision provides:

SECTION II - EXCLUSIONS

More specifically, Coverage L and Coverage M do not apply to:

- h. bodily injury to you or any insured within the meaning of part a. or b. of the definition of insured.

This exclusion also applies to any claim made or suit brought against you and any insured to share damages with or repay someone else who may be obligated to pay damages because of the bodily injury sustained by you or any insured within the meaning of part a. or part b. of the definition.

The policy definition of an insured states:

DEFINITIONS

“Insured” means you and, if residents of your household:

- a. your relatives.

Plaintiff concedes that she was a resident of the household when the incident occurred. The sole issue remaining is whether a reasonable interpretation of the term “relative”, although not specifically defined in the policy, includes the policyholders’ daughter-in-law. Common sense dictates that a daughter-in-law is considered a relative of the policy holders “SMITHS” (See Eisner v. Aetna, 141 Misc2d 744, 534 NYS2d 339 (NYCty Sup Ct., 1988); Suba v. State Farm, 129 Misc2d 839, 494 NYS.2d 620(Oneida Cty Sup Ct, 1985) affirmed 114 AD2d 280, 498 NYS2d 656(4th Dept, 1986)). The exclusion set forth in the policy applies since plaintiff was a resident, relative of the insured and is therefore defined as an “insured” under the policy.

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There is no reasonable interpretation of the exclusion which would support plaintiff's claims under these circumstances and therefore defendant's motion for an order granting summary judgment dismissing plaintiff's complaint must be granted (Seaboard v. Gillette, supra). Accordingly it is

ORDERED, ADJUDGED and DECREED that defendant "STATE FARM's" motion for an order pursuant to CPLR Section 3212 granting summary judgment against plaintiff dismissing plaintiff's declaratory judgment complaint against "STATE FARM" is granted and plaintiffs cross motion is denied. The complaint against defendant "STATE FARM" is hereby dismissed.

Dated: August 31, 2007

MELVYN TANENBAUM

J.S.C.

FINAL DISPOSITION