

Federal Ins. Co. v Samuel Aaron, Inc.

2009 NY Slip Op 30197(U)

January 30, 2009

Supreme Court, New York County

Docket Number: 108256/06

Judge: Walter B. Tolub

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

PRESENT: TOLUB
Justice

PART 15

FEDERAL INSURANCE COMPANY

INDEX NO.

108256/06

MOTION DATE

- v -
SAMUEL AARON, INC.,
ETAL

MOTION SEQ. NO.

05

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

IN ACCORDANCE WITH A ...

FILED

FEB 02 2009

Dated: 1/2/09

WALTER B. TOLUB
936

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

Index No. 108256/06
Mtn Seq. 005

Plaintiff,

-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 47TH AVENUE LLC., IMPERIAL FIRE
PROTECTIONS SYSTEMS, INC, and
KND MANAGEMENT CO., INC.,

Third-Party Defendants.

FILED
FEB 07 2009
COUNTY CLERK'S OFFICE
NEW YORK

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

This subrogation claim arises out of property damage claimed to have been sustained as a result of a 2005 fire which occurred on the 4th floor of a building located at 31-00 47th Avenue in Long Island city ("the building"). According to the complaint, the property damage occurred when the sprinkler system on the 4th floor activated and continued to discharge water long after the fire was extinguished.

In connection with its own fire investigation, in September of 2005 defendant Samuel Aaron, Inc. ("Samuel Aaron") through its

insurer, Chubb Insurance Company, retained the investigative services of non-party Public Investigation Services, Inc. ("Public Investigation") (Reply Affirmation, Affidavit of Eric Currivan, Secretary/Treasurer and past Vice President of Public Investigation). Michael Montemarano, an investigator associated with Public Investigation, conducted the investigation. The investigation was commenced to determine liability in connection with the February 2005 incident (see, Reply Affirmation, Affidavit of Joanne MCGunnigle).

This action was commenced in June of 2006. In September of 2008, defendant-third-party A-Aron Security Services, Inc., d/b/a Aarow Security Patrols ("A-Aron Security") served a subpoena duces tecum and subpoena testificandum ("the subpoena") upon non-party Michael Montemarano/Public Investigation. The subpoena specifically seeks the production of:

[a]ll notes and records relating to the fire alarm, sprinkler, fire suppression, central monitoring system, central alarm system, central fire monitoring system at 31-00 47th Avenue, Long Island City, New York, for the period February 23, 2004 to December 31, 2005, including but not limited to, copies of all contracts and riders with any fire alarm, central monitoring alarm, fire alarm maintenance, sprinkler maintenance, fire alarm companies and all documents of any kind, including but not limited to, correspondence, e-mails, letters, logs, computer or other print-outs relating to installation, testing, maintenance, inspection and repair of said systems, including copies of all records reflecting alarms sent from said system and all permits and violations regarding said systems.

[*4]
(Order to Show Cause, Exhibit B).

By this motion, defendant Samuel Aaron moves to quash the subpoena pursuant to CPLR 2304, and additionally seeks a protective order pursuant to CPLR 3103. In support of the motion, defendant Samuel Aaron argues that to date, defendant A-Aron security has not demonstrated a need for the materials requested from Public Investigation. Defendant Samuel Aaron further asserts that the file is immune from discovery because it was prepared expressly for the purpose of litigation.

This court is inclined to agree. Notwithstanding the arguments advanced by defendant A-Aron Security, it is apparent to the court that the services of Public Investigation were retained shortly after the fire by Chubb Insurance Company, the insurer of Samuel Aaron and the purpose of that retention, was to investigate potential liability arising out of the 2005 fire. The investigation, commenced more than eight months prior to the commencement of litigation, is part of the liability insurer's claim file, and as such, is conditionally immune from discovery as material prepared for litigation (Sofio v. Hughes, 148 AD2d 439 [2nd Dept 1989]). In the absence of a demonstration of the existence of special circumstances, the subpoena is quashed, and the balance of the motion seeking a protective order pursuant to CPLR 3103 is at this juncture, denied. As such, it is

ORDERED that the motion advanced pursuant to CPLR 2304 by

