

**Bridge View Tower, LLC v Sirius Am. Ins. Co.**

2009 NY Slip Op 31686(U)

July 28, 2009

Supreme Court, New York County

Docket Number: 601314/08

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 601314/2008  
**BRIDGE VIEW TOWERS, LLC**  
 vs.  
**SIRIUS AMERICA INS. CO.**  
 SEQUENCE NUMBER : 003  
 SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
 MOTION DATE 3/19/09  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-3  
4-9  
10-12

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 decided in accordance with the annexed memorandum decision and order.*

*N.B. - Compliance cert. scheduled for 8/24/09 at 11 AM*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 7/28/09

  
 JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----x  
BRIDGE VIEW TOWER, LLC,

Index No.: 601314/08

Plaintiff,

-against-

DECISION AND ORDER

SIRIUS AMERICA INSURANCE COMPANY,  
GREMESCO OF MANHATTAN, LLC,  
NORTHEASTERN GROUP, LTD., and  
ACC CONSTRUCTION, LLC,

Defendant.

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1415).

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SOLOMON, J.

Defendant Sirius America Insurance Company moves for summary judgment in its favor dismissing the complaint and cross-claims against it in this lawsuit regarding insurance coverage. The motion, opposed by plaintiff Bridge View Tower, LLC (Bridge View), ACC Construction, LLC (ACC) and defendant Gremesco of Manhattan, LLC (Gremesco), is granted for the reasons below.

Bridge View is the owner of a new building constructed at 189 Bridge Street in Brooklyn. It hired defendant ACC as general contractor for the project. Under the terms of their written contract, ACC agreed to indemnify Bridge View for claims arising from its work, and to procure insurance naming Bridge View as an additional insured (see Contract, annexed as Ex. A to Affirmation in Opposition of Stehen M. Honan, Esq.). ACC purchased a general liability insurance policy from defendant Sirius America Insurance Company (Sirius). The policy does not name Bridge View as an insured or additional insured, nor does it

contain a blanket additional insured endorsement (Policy, annexed to Notice of Motion at Ex. E). A blanket additional insured endorsement is a common feature of liability insurance policies procured by general contractors, and typically extends additional insured coverage to any entity that the contractor is obligated to name as an additional insured in its policy under a written contract, without requiring that the entity be specifically identified in the policy (see 3 Couch On Insurance 3d, ¶ 40:25, citing *National Abatement Corp. v National Union Fire Ins. Co.*, 33 AD3d 570 [1<sup>st</sup> Dept 2006]). Nevertheless, ACC's insurance broker, defendant Northeastern Group, Ltd. (Northeastern), prepared a certificate of insurance for ACC indicating that Bridge View was an additional insured under ACC's policy with Sirius (see Notice of Motion, Ex. F).

Two construction workers employed by ACC allege that they were injured in accidents while working on the building, and they separately commenced lawsuits under the New York Labor Law against Bridge View and others in this court.<sup>1</sup> In a third incident, a company called Mayfair Shipping Supplies, Inc. claimed that it sustained property damage arising from construction work on the Bridge View premises. Its insurer

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<sup>1</sup> *Hipolito Temoxtle v Bridge View Tower, LLC, et al.*, New York County index number unknown, and *Victor Peneranda v Bridge View Tower, LLC, et al.*, New York County index number 107381/07

commenced a subrogation action against Bridge View and others.<sup>2</sup>

In connection with each of these lawsuits, Bridge View demanded a defense and indemnification from Sirius as an additional insured under the policy issued to ACC. Sirius disclaimed coverage on the grounds that Bridge View was not an additional insured on the policy, and for other reasons not relevant to the motion (Notice of Motion, Ex. K).

Bridge View then commenced this lawsuit seeking a declaration that Sirius is obligated to defend and indemnify it as an additional insured under the Sirius policy numbered IRS 106496. Bridge View also claims that Gremesco and Northeastern are insurance brokers retained by ACC to advise it in placing the appropriate insurance, and that they were negligent in obtaining the Sirius policy. Bridge View argues that it is entitled to damages from Gremesco and Northeastern for breach of contract because it was a third-party beneficiary of contracts between ACC and the brokers. In an earlier motion (sequence 02), the complaint was dismissed as against Northeastern, which remains as a defendant on cross-claims.

While ACC is sued only nominally as a necessary party, it has cross-claims against the other defendants alleging that, to the extent that Bridge View's damages are not the result of

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<sup>2</sup> *Travelers a/s/o Mayfair Ship Supplies, Inc. v Bridge View Towers, LLC, et al.*, New York County index number 105355/08, which was discontinued after this motion was made.

its own negligence, it is the result of the negligence of the co-defendants, and ACC demands indemnification for any judgment in Bridge View's favor against it in this lawsuit. Gremesco asserts the same cross-claim against its co-defendants.

The policy Sirius issued to ACC does not have a blanket additional insured endorsement. Under the terms of the policy, ACC was required to submit a written request to add Bridge View as an entity as an additional insured, and this was not done. Based on these uncontested facts, Sirius has established that Bridge View was not an additional insured under the policy.

Where a moving party has demonstrated prima facie entitlement to judgment as a matter of law, as here, it is the burden of the summary judgment opponent to present admissible evidence showing the existence of a triable issue of fact (*Zuckerman v City of NY*, 49 NY2d 557 [1980]). The parties opposing Sirius's motion have not met that burden.

Bridge View and the other defendants argue that summary judgment is not appropriate because discovery is not complete. This argument fails because there is no indication that depositions or further documentary disclosure would lead to a different result, or would raise an issue of material fact. Sirius's argument is based on the text of the policy Bridge View named in the complaint as the relevant document, and there is no disputing that the policy does not include a blanket additional

insured endorsement.

Gremesco argues that an issue of fact exists based on the certificate of insurance prepared by Northeastern. On its face, the certificate states "This certificate is issued as a matter of information only . . . [and] does not amend, extend or alter the coverage afforded by the policies below". Although a certificate of insurance showing a party is an additional insured on a policy is evidence of such coverage where the certificate was issued by the insurer (*see, Bucon, Inc. v Penn. Mfg. Assoc. Ins. Co.*, 151 AD2d 207 [3d Dept 1989]), the certificate here was not issued by Sirius.

Gremesco further argues that in the earlier motion, a Northeastern employee named Harry Das submitted an affidavit stating that Sirius sent him a copy of the policy issued to ACC showing that Bridge View was an additional insured. The Das affidavit refers to an attached "Exhibit E" as evidence of said policy. Gremesco, however, omits the exhibit from its opposition papers, the reason for which is made clear by Sirius's inclusion of the exhibit in its reply. The exhibit is a copy of a document sent by Gremesco to Northeastern, which is not a copy of the policy but a declarations sheet which does not state that the policy has a blanket additional insured endorsement, or that Bridge View is an additional insured (the identical document was submitted on Sirius's motion as Ex. E). To the extent that the

insured endorsement.

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Das affidavit is offered as evidence of the content of a document, it is belied by the document itself and does not raise a triable issue of fact.

The cross-claim by ACC is dismissed as against Sirius because it seeks indemnification to the extent that it is found liable to Bridge View for damages in this lawsuit. However, Bridge View does not seek any damages from ACC in this lawsuit, so ACC's cross-claim has no merit.

Finally, the court notes that this result does not extinguish any obligation Sirius has to cover the claims in the three lawsuits as ACC's insurer, including obligations arising from ACC's indemnity owed to Bridge View. It means only that Sirius is not obligated to do so as Bridge View's insurer. Accordingly, it hereby is

ORDERED that Sirius's motion for summary judgment is granted, and the complaint and cross-claims as against it are severed and dismissed; and it further is

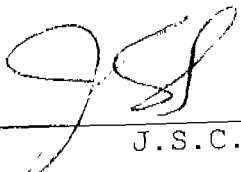
DECLARED and ADJUDGED that Bridge View is not an additional insured under the policy issued by Sirius to ACC (policy number IRS 106496); and it further is

ORDERED that the Clerk of the Court shall enter judgment accordingly with costs and disbursements to Sirius as taxed; and it further is

ORDERED that counsel for the remaining parties shall appear in Part 55 for a compliance conference on August 24, 2009 at 11 AM.

Dated: July 28, 2009

ENTER:

  
\_\_\_\_\_  
J.S.C.

JANE S. SOLOMON

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