

**Cosmos, Queens Ltd. v Matthias Saechange IM
Agency**

2009 NY Slip Op 31846(U)

August 17, 2009

Supreme Court, New York County

Docket Number: 106469/08

Judge: Jane S. Solomon

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SCANNED ON 8/18/2009
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Jane S. Solomon

PART 55

Index Number : 106469/2008
COSMOS, QUEENS
VS.
MATTHIAS
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3

4-5

6

Cross-Motion: Yes No

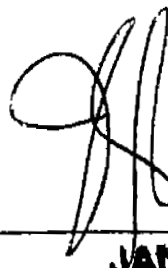
Upon the foregoing papers, It is ordered that this motion is decided in accordance with the annexed Decision and Order.

FILED

AUG 18 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/17/09



JANE S. SOLOMON s.c.
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 STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
COSMOS, QUEENS LTD.,

Plaintiff,

-against-

MATTHIAS SAECHANG IM Agency and
MATTHIAS SAECHANG IM Individual

Defendants.

-----X
JANE S. SOLOMON, J.S.C.:

FILED
AUG 18 2009
COUNTY CLERK'S OFFICE
NEW YORK

Index No. 106469/08

Decision and Order

Motion Seq. No. 001

Motion Seq. No. 002

INTRODUCTION

Plaintiff Cosmos, Queens Ltd. ("Cosmos"), the operator of a jewelry store in Flushing, Queens (the "Store"), sues its insurance broker and agency for a \$275,000 loss that resulted from a robbery. Defendant Matthias Saechang Im ("Im") is the broker, and the agency is defendant the Matthias Saechang Im Agency (the "Agency"). The insurance policy that was procured by Im for the Store was issued by LIG Insurance Co. Limited (United States) ("LIG"). Defendants move for summary judgment (001) and to vacate the note of issue filed by Cosmos (002).

FACTS

Prior to obtaining coverage through LIG, Cosmos was insured by St. Paul Fire and Marine Insurance Company ("St. Paul") under a policy that provided up to \$1,240,000 in theft coverage. In 2006, Im spoke with Jae Lee ("Lee"), Cosmos' principal, about obtaining a new policy. Lee claims that he told

Im that he wanted "apple to apple" coverage, meaning that he wanted to have the same coverage that he had with the St. Paul policy. Im procured an LIG policy for the period from May 9, 2007 to May 9, 2008 without being aware that it had limited theft coverage.

After the effective date of the policy, Im called Lee and told him that the LIG policy was limited to \$2,500 in jewelry coverage and he advised Lee that he would try to increase the theft limit. When Lee responded that he needed \$1 million in coverage, Im said that he could not obtain that much. Im was able to procure theft coverage for \$100,000, and told Lee that he might be able to raise it to \$200,000 if Lee provided him with a signed letter requesting the increase; for this purpose he sent a draft letter for Lee's signature.

Lim further informed Lee that Cosmos could obtain a jewelers block policy that would provide full jewelry coverage. In order to obtain a jewelers block policy, certain security requirements would have to be met. On June 5, 2007, Im faxed Lee two jewelers block applications, but Lee never submitted a completed application. Attached to the applications was a fax cover sheet from another insurance broker, who noted certain "safe requirements" in the "comments" section and advised that: "Since this is not only a jewelry store (they sell other items) we may not be able to help." (Exh. E to Affirmation of Suzanne

M. Saia.)

A month or two after receiving the unsigned draft letter requesting \$200,000 in theft coverage, at 4:58 p.m. on July 6, 2007, a Friday, Lee sent a signed copy of the document to Im via fax. That weekend, before the letter was sent to LIG, there was a robbery at the store resulting in a loss of \$275,000. LIG paid \$100,000 for the loss.

In this action, Cosmos asserts causes of action for breach of contract and negligence. Cosmos asserts that Im was negligent and breached his contract with Cosmos by failing to obtain "apple to apple" coverage pursuant to Lee's request.

DISCUSSION

"[A] broker has a common-law duty either to obtain the coverage that a customer specifically requests or to inform the customer of an inability to do so." Hoffend & Sons, Inc. v. Rose & Kiernan, Inc., 7 N.Y.3d 152, 157 (2006); Murphy v. Kuhn, 90 N.Y.2d 266, 270 (1997). If a specific request is made and the broker does not either comply with it or explain that he is unable to do so, the broker can be held liable by an insured for an uncovered loss.

Defendants argue that they are not liable because Im ultimately advised Lee about the limited coverage and attempted to help Cosmos obtain additional theft coverage. They contend

that Lee's failure to fill out a jewelers block application and return the letter requesting \$200,000 in theft coverage broke the chain of proximate causation. They also contend that Cosmos assumed the risk of being under-insured because Lee was aware of the limited coverage but did not take the steps needed to obtain appropriate theft coverage.

Plaintiff argues that Im breached his duty to Cosmos by not advising Lee that he was unable to get "apple to apple" coverage as requested, and contends that Lee's subsequent failure to complete the jewelers block application and his delay in signing the letter requesting \$200,000 of theft coverage does not relieve defendants of liability. Cosmos asserts that it is not clear whether it would qualify for jewelers block insurance, or whether it would have been practical to obtain such insurance. Cosmos also argues that Lee's delay in signing the letter requesting the \$200,000 in theft coverage is of no consequence because the request would not have been granted.

Defendants have not established their entitlement to summary judgment. Lee specifically requested that Lim provide coverage identical to that from St. Paul. Lim then was duty bound to either obtain it or tell Lee that he could not, but he did neither. Instead, he obtained a different policy.

The summary judgment motion cannot be granted as a matter of law because there are questions of fact, implicating

issues of credibility, regarding whether Lim's subsequent actions limited or, indeed, relieved defendants' of liability for the uncovered amount of the loss.

With respect to the motion to vacate the note of issue, defendants have shown that they are entitled to additional discovery. Defendants request; among other things, cancelled checks and bank statements for the stolen and/or damaged watches and Cosmos' June inventory. If Cosmos cannot obtain some or all of the requested documents, it should provide defendants with a proper affidavit. The note of issue is vacated, and the parties are directed to appear for a compliance conference, so that a new discovery order can be made and an appropriate schedule set.

CONCLUSION

Accordingly, it hereby is

ORDERED that defendants' motion for summary judgment is denied; and it further is

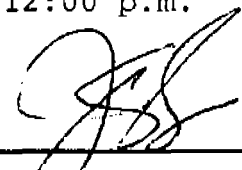
ORDERED that the note of issue dated April 28, 2009 is vacated and the case is restored to "pre-note" status; and it further is

ORDERED that the parties shall appear for a compliance conference on September 14, 2009 at 12:00 p.m.

Dated: August

FILED
AUG 18 2009

ENTER:



J.S.C.

**JANE S. SOLOMON
J.S.C.**

**COUNTY CLERK'S OFFICE
NEW YORK**