

**Cosmos, Queens Ltd. v Matthias Saechang Im
Agency**

2009 NY Slip Op 32750(U)

November 18, 2009

Supreme Court, New York County

Docket Number: 106469/2008

Judge: Jane S. Solomon

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

PRESENT: Solomon
Justice

PART 55

Cosmos, Queens

INDEX NO. 106469/2008
MOTION DATE 10/9/09
MOTION SEQ. NO. 03
MOTION CAL. NO. _____

- v -

MATHIAS

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

1-3

MEMO only

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ^{and adjudge} is decided by the annexed
Decision and order

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

FILED
NOV 23 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/18/09

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

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X

COSMOS, QUEENS LTD.,

Index No. 106469/2008

Plaintiff,

DECISION AND ORDER

-against-

MATTHIAS SAECHANG IM AGENCY and
MATTHIAS SAECHANG IM, INDIVIDUALLY,

Defendants.

FILED
NOV 23 2009
NEW YORK
COUNTY CLERK'S OFFICE

-----X
SOLOMON, J.:

Plaintiff Cosmos, Queens Ltd., the operator of a jewelry store in Flushing, Queens, sues its insurance broker, defendant Matthias Saechang Im ("Im") for \$275,000, a loss incurred from a burglary, on the ground that Im procured an inadequate insurance policy. Im's motion for summary judgment was denied by decision and order dated August 17, 2009, and he now moves for leave to reargue.

Im makes several arguments. First, he argues that the court misapprehended that Im did not inform Dong Jae Lee (Lee), the principal and owner of Cosmos, that he could not obtain the requested coverage, as he did so in 2007. Second, Im contends that "the fact that Lee's policy renewed first and then Im informed Lee that he did not have \$1,000,000 coverage is of no moment" because of Lee's "intervening actions," specifically that Lee failed to apply for a Jeweler's Block Policy and did not sign and return a "ghost letter" requesting additional crime coverage.

Im contends that these two intervening actions absolve Im of liability. Finally Im argues that the court misapprehended the law when it failed to recognize that Im assumed the risk of being uninsured, in that Lee knew that Im could not supply a one million dollar policy, yet continued to request such coverage.

Initially, the court acknowledges that it misapprehended the sequence of events in its original decision. In that decision the court incorrectly noted that Im spoke with Lee in 2006 about obtaining a new policy. Accordingly, reargument is granted to allow the court to address this discrepancy.

The correct time line follows. Lee initially discussed brokering a new insurance policy with Im in 2005. Prior to May 2006, Cosmos had been insured by St. Paul Fire and Marine Ins. Co. ("St. Paul") under a policy that provided up to \$1,240,000 in theft coverage. Lee gave a copy of the St. Paul policy to Im to study and requested "apple to apple" coverage, meaning that he wanted to have the same coverage that he had under the St. Paul policy. Subsequently, Im obtained a policy for Lee through LIG Insurance Co., LTD. (LIG) for the term from May 2006 through May 2007.

Unbeknownst to both Im and Lee, the policy Im procured did not provide \$1,240,000 in theft coverage. It was not until after the LIG policy renewed for a second year, in May of 2007,

that Im learned that the LIG policy provided limited theft coverage of only \$2,500. In June or July, 2007, Im informed Lee of this inadequacy and stated that he would try to increase the theft coverage. Although Lee responded that he required \$1 million in coverage, Im stated that he could not obtain that much. Instead, Im procured \$100,000 in theft coverage and told Lee that he might be able to raise it to \$200,000 if Lee signed a request that Im drafted, which the parties refer to as a "ghost letter." Im also suggested that Lee should apply for a Jeweler's Block Policy, which would cover all his jewelry without limit. For several business reasons, Lee chose not to apply for the Jeweler's Block policy, and he waited one or two months before signing and returning to Im the letter requesting the increased coverage. The following day, the store was burglarized, and \$275,000 worth of merchandise was taken. Under the policy, LIG covered Cosmos's losses for \$100,000.

Upon review of these facts, the court is not persuaded that its misapprehension of facts materially alters its prior decision. It is uncontested that Im initially believed he was providing Lee with the proper coverage, but in fact did not procure the "apple to apple" insurance policy that Lee sought. Furthermore, Im did not make Lee aware of the difference until after the LIG policy renewed for a second year.

"[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 NY3d 152, 157 (2006); *Murphy v. Kuhn*, 90 NY2d 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.

Im's failure to procure the coverage that Lee requested and Im's failure to inform Lee of his inability to do so for over a year is not "of no moment," as Im argues; rather, it is a critical factor in determining whether Im fulfilled his broker's duty. That duty is the crux of Plaintiff's claim, and issues of fact remain regarding Im's execution of that duty.

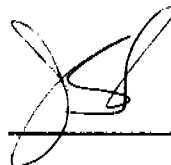
Similarly, factual issues exist about Lee's conduct, including his delay in issuing the request for an additional \$100,000 in coverage, and whether it could have succeeded and whether a Jewelers Block Policy was available. Both issues potentially limit or relieve Im of liability for the uncovered amount of the loss. From the submissions, it is unclear whether Lee would have qualified for the Jewelers Block Policy or whether LIG would have offered a \$200,000 theft coverage policy.

Accordingly, it is hereby

ORDERED that defendants' motion for leave to reargue is granted and upon reargument, the prior order is adhered to and summary judgment is denied.

Dated: November 18, 2009

ENTER:



J.S.C

JANE S. SOLOMON

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