

Chunn v New York City Hous. Auth.

2011 NY Slip Op 32972(U)

November 3, 2011

Supreme Court, New York County

Docket Number: 116764/06

Judge: Louis B. York

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

PRESENT: _____
Justice

PART _____

Index Number : 116764/2006
CHUNN, CHRISTOPHER
vs.
HOUSING AUTHORITY
SEQUENCE NUMBER : 010
RENEWAL

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

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

FILED

Upon the foregoing papers, it is ordered that this motion

NOV 09 2011

NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 11/3/11

Ley
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 2

-----X
CHRISTOPHER CHUNN,
Plaintiff,

Index No.: 116764/06
DECISION/ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY and
AMERICAN SECURITY SYSTEMS, INC.,
Defendants.
-----X

NEW YORK CITY HOUSING AUTHORITY,
Third-Party Plaintiff,

-against-

Index No.: 590332/07

AMERICAN SECURITY SYSTEMS, INC.,
Third-Party Defendant,
-----X

NEW YORK CITY HOUSING AUTHORITY,
Second Third-Party Plaintiff,

-against-

Index No.: 590870/07

NATIONAL INSURANCE COMPANY and
SCOTTSDALE INSURANCE COMPANY,
Second Third-Party Defendants,
-----X

HON. LOUIS B. YORK, J.S.C.:

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

In this personal injury/negligence action and the two declaratory judgments that follow it, the second third-party defendants move for leave to renew a portion of an earlier cross motion for summary judgment, and the defendant/second third-party plaintiff cross-moves for the entry of an interim judgment pursuant to another earlier motion (collectively, motion sequence number 010). For the following reasons, the motion is granted, and the cross motion is granted in part.

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NEW YORK COUNTY-CIVIL

BACKGROUND

According to the cross motion of defendant and first and second third-party plaintiff, New York City Housing Authority, on December 31, 2005, plaintiff Christopher Chunn (Chunn) was visiting his sister, who resides in apartment 4F in the Taft Houses, a public housing facility located at 1735 Madison Ave. in the County, City and State of New York (the building). Upon returning to the building from an errand to buy cigarettes, Chunn was attacked and rendered comatose by several unknown individuals who had improperly gained access to the building as a result of a broken door. New York City Housing Authority (NYCHA) owns and manages the building. Defendant/third-party defendant American Security Systems, Inc. is the entity with which NYCHA had contracted for maintenance and repair of the building's intercom system. Third-party defendants National Casualty Company (National) and Scottsdale Insurance Company (Scottsdale; collectively, the Scottsdale defendants) are ASSI's insurers. The Scottsdale defendants issued two insurance policies to ASSI that name NYCHA as an additional insured, and also issued a third policy directly to NYCHA. The former two policies included a "comprehensive general liability" (CGL) policy and an excess insurance policy. The latter was an "owners and contractors protective" (OCP) policy.

The Scottsdale defendants' motion papers reveal that Chunn commenced the underlying action on October 31, 2006 (the Chunn action), by serving a summons and complaint on NYCHA that set forth a single cause of action for negligence that was based on allegations that the building's door and/or intercom system were not properly maintained. NYCHA filed its original answer on November 30, 2006. Thereafter, on April 12, 2007, NYCHA served a third-party complaint on ASSI that set forth causes of action for: 1) contractual indemnity; 2)

common-law indemnity; 3) breach of contract (failure to obtain insurance); and 4) contribution. ASSI filed its answer on May 30, 2007. Thereafter, on June 5, 2007, Chunn served an amended complaint that again set forth one cause of action for negligence, but named both NYCHA and ASSI as defendants. NYCHA and ASSI served their respective amended answers (with cross claims) on June 19, 2007 and June 26, 2007. Finally, on November 1, 2007, NYCHA served a second third-party complaint on National and Scottsdale. National and Scottsdale served a combined answer on December 14, 2007. Discovery and motion practice ensued.

In July 2008, NYCHA moved for summary judgment to dismiss the complaint as against it, and ASSI cross-moved for summary judgment to dismiss NYCHA's third-party complaint against it. On June 15, 2009, this court entered a decision that denied both NYCHA's motion and ASSI's cross motion. However, on April 5, 2011, the Appellate Division, First Department, issued a decision (*Chunn v New York City Hous. Auth.*, 83 AD3d 416, 416 [1st Dept 2011]) (the 2011 decision) that modified this court's decision by: 1) upholding it with respect to NYCHA; but 2) reversing it as to ASSI, and dismissing the third-party complaint against it. The relevant portion of the First Department's 2011 decision at pp. 416-418 found as follows:

Orders, Supreme Court, New York County (Louis B. York, J.), entered September 2, 2009, which, to the extent appealed from as limited by the briefs, denied defendant New York City Housing Authority's (NYCHA) motion for summary judgment dismissing the complaint as against it and denied defendant/third-party defendant American Security Systems, Inc.'s (ASSI) cross motion for summary judgment dismissing the third-party complaint, unanimously modified, on the law, to grant ASSI's motion, and otherwise affirmed, without costs. Appeal from order, same court and Justice, entered April 29, 2010, which granted NYCHA's motion for reargument and adhered to its original determination, unanimously dismissed, without costs, as academic. The Clerk is directed to enter judgment dismissing the third-party complaint against ASSI.

ASSI's motion for summary judgment dismissing the third-party complaint should have been granted. NYCHA concedes that ASSI's insurance policies name it as an additional insured, so there is no merit to NYCHA's claim against ASSI for failure to procure insurance. As to its contribution claim, NYCHA failed to raise an inference that ASSI owed it a duty of reasonable care independent of its contractual obligations, or that ASSI owed a duty directly to plaintiff, and that a breach of either duty contributed to plaintiff's injuries. In any event, the motion court found that ASSI owed no duty directly to plaintiff, and NYCHA does not challenge this determination. Since NYCHA's liability, if any, will be based on its own negligence, it has no claim for common-law indemnification. As to NYCHA's claim for contractual indemnification, ASSI established prima facie that it fulfilled its contractual obligations by performing quarterly maintenance inspections, about which NYCHA never made any complaint, and made all repairs that NYCHA requested of it in a professional, workmanlike manner. NYCHA, in opposition, failed to raise an issue of fact [internal citations omitted].

Prior to that, NYCHA had moved for summary judgment to obtain a declaration that ASSI was obligated to provide it with a defense and indemnification, and both ASSI and the Scottsdale defendants cross-moved (separately) to obtain a contrary declaration, and to sever the respective third-party complaints against them (motion sequence number 005). On March 11, 2008, this court issued an order that granted NYCHA's motion and denied ASSI's and the Scottsdale defendants' cross motions. However, previously, on October 23, 2008, the Appellate Division, First Department, had issued another order (*Chunn v New York City Hous. Auth.*, 55 AD3d 437 [1st Dept 2008]) (the 2008 decision) that modified this court's earlier decision by: 1) declaring that the third-party defendants were only obligated to provide NYCHA with a defense, but not with indemnification; and 2) reversing the court's denial of the cross motions to sever the third-party actions (and severing said third-party actions). The First Department's 2008 decision found, in pertinent part, as follows:

The comprehensive general liability (CGL) policy issued by [National] to ASSI provides for insurance for NYCHA as an additional insured with respect to

liability for, inter alia, bodily injury caused, in whole or in part, by ASSI's "acts or omissions." The complaint asserts that plaintiff's injury was caused, in whole or in part, by ASSI's acts or omissions with respect to the NYCHA building's systems. Therefore, NYCHA is entitled to a defense under the policy. Contrary to the insurers' contention that they have demonstrated as a matter of law that "there is no possible factual or legal basis on which [they] might eventually" be obligated to indemnify NYCHA, the affidavit by plaintiff's sister, a tenant in the building, which asserts that the intercom had been broken for several months before the incident in which plaintiff was assaulted, presents an issue of credibility that precludes summary judgment.

NYCHA is also entitled to a defense under the excess policy issued to ASSI by [Scottsdale], because that policy follows the form of [National's] CGL policy, under which NYCHA is an additional insured.

The insurers' ground for disclaiming coverage under the owners and contractors protective (OCP) policy issued by [Scottsdale], i.e., late notice, is belied by the record, as is their contention that notice to [National] did not constitute notice to [Scottsdale] as well. However, in any event, any delay in notice was due to misleading statements by the [National] claims department concealing the existence of the OCP policy.

While the duty to defend is clear, issues of fact as to liability in the underlying personal injury action render premature the conclusion that the insurers have a duty to indemnify NYCHA.

The second third-party action should be severed to avoid the prejudice to the second third-party defendants that would result from the jury's awareness of the existence of liability insurance [internal citations omitted].

Now, as a result of the First Department's 2011 ruling, the Scottsdale defendants move, pursuant to CPLR 2221, for leave to renew the portion of their earlier cross motion for summary judgment that requested dismissal of NYCHA's second third-party complaint against them. NYCHA, for its part, cross-moves, pursuant to the First Department's 2008 decision, for the entry of an interim money judgment for \$197,207.08 against the Scottsdale defendants (representing the costs of NYCHA's defending the Chunn action).

DISCUSSION

Defendants' Motion

CPLR 2221 requires different showings to be made in support of motions to renew and

motions to reargue. A motion to renew must be based on “material facts which, although extant at the time of the original motion, were not then known to the party seeking renewal and, consequently, were not placed before the court.” See *Matter of Beiny*, 132 AD2d 190, 209-210 (1st Dept 1987), citing *Foley v Roche*, 68 AD2d 558, 568 (1st Dept 1979). By contrast, a motion for leave to reargue may be granted only upon a showing “that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992), quoting *Schneider v Solowey*, 141 AD2d 813 (2d Dept 1988). Here, the Scottsdale defendants purport to seek “renewal” of their earlier cross motion for summary judgment (i.e., motion sequence number 005) that sought dismissal of NYCHA’s third-party complaint against them. However, inasmuch as their arguments all turn on the two Appellate Division, First Department, decisions that modified this court’s earlier decisions on the law, it is clear that the Scottsdale defendants are seeking reconsideration of the legal basis of the court’s earlier decision in light of the First Department’s 2008 and 2011 decisions, as opposed to applying any new facts. Thus, the court finds that the Scottsdale defendants have inadvertently characterized their motion as one to “renew” when it is actually seeking leave to “reargue” their previous summary judgment application.

The Scottsdale defendants commence their motion by asserting three contract-based arguments as to why they are neither obligated to defend, or to indemnify, NYCHA, and why NYCHA’s third-party complaint should, therefore, be dismissed. First, the Scottsdale defendants argue that NYCHA is not an “insured,” pursuant to the terms of the CGL policy, because the “blanket additional insured endorsement” of that policy sets forth several limitations that

disqualify NYCHA from that status. These specifically include: 1) Section II (1) (a), which disclaims liability for “bodily injury” that was “caused, in whole or in part, by ... your acts or omissions;” 2) Section II (3), which provides that “coverage is not provided for ‘bodily injury’ ... arising out of the sole negligence of the additional insured;” and 3) Section I (b) (1) of the “commercial general liability coverage form,” which provides that “this insurance applies to ‘bodily injury’ ... only if the ‘bodily injury’ ... is caused by an ‘occurrence,’” which term the CGL policy defines as including an “accident,” but not an assault, such as the one that Chunn suffered. The Scottsdale defendants next argue that they are entitled to summary judgment dismissing NYCHA’s third-party complaint against them because the excess insurance policy does not contain an additional insured endorsement pursuant to which NYCHA could claim coverage. Finally, the Scottsdale defendants argue that they are entitled to summary judgment dismissing NYCHA’s third-party complaint against them because the OCP policy includes limitations on coverage that preclude any claim by NYCHA under that policy.

Before making any specific response to the three foregoing arguments, NYCHA contends that they are all improper, because they incorrectly presume that the Scottsdale defendants may rely on the First Department’s 2011 ruling that dismissed the third-party action against ASSI as a ground for renewal of their earlier summary judgment motion, while ignoring the adverse determinations against the Scottsdale defendants that were previously set forth in the First Department’s 2008 ruling. NYCHA notes that the First Department’s 2008 decision specifically ruled that NYCHA was entitled to a defense from the Scottsdale defendants, pursuant to both the CGL policy and the excess insurance policy, and argues that this duty to defend remains in effect despite the fact that the First Department’s 2011 decision held that ASSI is not obligated to

indemnify NYCHA in any way. The Scottsdale defendants reply that “by addressing ASSI’s liability, the First Department also addressed [the Scottsdale defendants’] duty to defend.” *See Mitchell Affirmation in Reply*, ¶¶ 10-13. NYCHA submits sur-reply papers in which it notes that the Scottsdale defendants do not support their argument with any case law, and opine that this is because existing case law clearly favors NYCHA’s position. After reviewing the controlling precedent, however, the court disagrees.

In *Bovis Lend Lease LMB Inc. v Garito Contr., Inc.* (65 AD3d 872, 875-876 [1st Dept 2009]), the Appellate Division, First Department, recently restated the long standing precedent thus:

“The ... duty to defend is broader than the duty to indemnify. As has long been recognized, “[t]he insured’s right to representation and the insurer’s correlative duty to defend suits ... are in a sense ‘litigation insurance’ expressly provided by the insurance contract” no matter how baseless the allegations contained in the complaint may be. “A declaration that an insurer is without obligation to defend a pending action could be made ‘only if it could be concluded as a matter of law that there is no possible factual or legal basis on which [the insurer] might eventually be held to be obligated to indemnify [the insured] under any provision of the insurance policy.’” “The duty to indemnify is, however, distinctly different” because “the duty to pay is determined by the actual basis for the insured’s liability to a third person” and is not measured by the allegations of the pleadings.” [internal citations omitted].

Here, the First Department’s 2008 decision unquestionably imposed a duty to defend NYCHA on the Scottsdale defendants. However, the First Department’s 2011 decision also unquestionably held that “NYCHA’s liability, if any, [in the underlying action] will be based on its own negligence.” Thus, the First Department’s more recent decision constitutes a finding that “as a matter of law that there is no possible factual or legal basis on which the insurer [i.e., the Scottsdale defendants] might eventually be held to be obligated to indemnify the insured [i.e.,

NYCHA] under any provision of the [CGL] policy.” Therefore, the Scottsdale defendants are potentially entitled to a declaration that they are not obligated to provide NYCHA with a defense to Chunn’s action, and it is now necessary to review the terms of the instant policies to determine whether or not they impose a duty to defend NYCHA on the Scottsdale defendants. Upon review of those terms, the court finds that they do not.

It is well settled that “on a motion for summary judgment, the construction of an unambiguous contract is a question of law for the court to pass on, and ... circumstances extrinsic to the agreement or varying interpretations of the contract provisions will not be considered, where ... the intention of the parties can be gathered from the instrument itself.” *Maysek & Moran v S.G. Warburg & Co.*, 284 AD2d 203, 204 (1st Dept 2001), quoting *Lake Constr. & Dev. Corp. v City of New York*, 211 AD2d 514, 515 (1st Dept 1995). Here, the court is specifically swayed by the clauses in the blanket additional insured endorsement of the CGL policy, cited *supra*, that limit the Scottsdale defendants’ liability for bodily injuries that were caused by the “acts,” “omissions,” or “sole negligence” of NYCHA or its employees. As previously discussed, the First Department has determined that any liability by NYCHA in the underlying action will be based on its own negligence. This is clearly not a determination that NYCHA *was* negligent, but is, rather, merely what it says - i.e., a determination that the “only possible factual or legal basis” for holding NYCHA liable to Chunn would be for the trier of fact to determine, at trial, that NYCHA had, itself, been negligent. However, this determination removes the possibility of the Scottsdale defendants being found liable for any quantum of negligence in the underlying action. Because the provisions of the CGL policy, cited above, do not obligate the Scottsdale

defendants to indemnify NYCHA against NYCHA's own negligence,¹ the court is now compelled to find that the Scottsdale defendants are not required to defend NYCHA in that underlying action either. *Bovis Lend Lease LMB Inc.*, 65 AD3d at 875-876.

NYCHA argues that the Scottsdale defendants have "mischaracterized" the First Department's 2011 decision, however, and urges that that ruling does not mandate that NYCHA's claims against the Scottsdale defendants must be dismissed like its claims against ASSI, because: 1) the First Department's 2008 decision had already determined that NYCHA *was* an "additional insured" of the Scottsdale defendants and entitled to a defense from them; and 2) the portion of that decision which found that ASSI was not negligent merely held that ASSI had not breached an independent tort duty to NYCHA, but did not find that ASSI owed no contractual duty to NYCHA. NYCHA puts it thusly: "absent evidence ... that the injuries to plaintiff were not caused in part by ASSI's non-negligent acts, the insurers' duty to indemnify has not been excluded." *See*, Notice of Cross Motion, Hamm Affirmation ¶20. However, this attenuated argument is belied by the fact that the First Department's 2011 decision specifically found that *all four* of NYCHA's claims against ASSI failed as a matter of law and had to be dismissed. Those claims consisted of breach of contract (failure to obtain insurance), contributory negligence and common-law and contractual indemnification. In the wake of the First Department's 2011 decision, there is simply no ground on which to find that any remaining duty - in tort, contract or otherwise - exists running from ASSI to NYCHA. Thus, the court rejects NYCHA's argument.

¹ And, indeed, General Obligations Law § 5-322.1 renders any provision in an insurance contract that purports to indemnify an insured against the results of his/her own negligence void as against public policy.

NYCHA also cited the Court of Appeal's holding in *BP Air Conditioning Corp. v One Beacon Ins. Group* (8 NY3d 708 [2007]) to support its argument that the Scottsdale defendants' duty to defend it is sufficiently broad, as a matter of law, to survive the Appellate Division's dismissal of NYCHA's claims against ASSI. However, this holding is unavailing, because it is factually inapposite and did not involve a scenario where, as here, "there is no possible factual or legal basis on which the insurer might eventually be held to be obligated to indemnify the insured under any provision of the insurance policy." *Bovis Lend Lease LMB Inc. v Garito Contracting, Inc.*, 65 AD3d at 875-876. Therefore, the court discounts NYCHA's reliance on this holding, and finds, instead, that the instant scenario is one of the rare occasions in which the insurer has demonstrated that it is neither obligated to indemnify nor to defend the insured.

At this juncture, it is important to recall that NYCHA's claims against ASSI, which the First Department dismissed, implicated only the CGL and excess insurance policies, on which ASSI was the named insured and NYCHA was an additional insured.² NYCHA makes this point obliquely by noting that it was Scottsdale's named insured on the OCP policy. NYCHA further notes that the "coverage for operations of designated contractor" endorsement of the OCP policy provides for coverage in the event of a "bodily injury" that is "caused by an 'occurrence' and arises out of (a) operations performed for you by the 'contractor' [i.e., ASSI] ... or (b) your acts or omissions in connection with the general supervision of such operations." Cross Motions Exhibit 5. NYCHA then argues that the First Department's 2011 decision did not specifically

² In the 2008 decision, the First Department noted that the excess insurance policy "followed the form of" the GCL policy; and, in its 2011 decision, the First Department dismissed all of NYCHA's claims against ASSI under both policies. *See* Notice of Motion, Exhibit 1; Notice of Cross Motion, Exhibit 1.

apply to the OCP policy, and cites a quantity of case law that accords a broad interpretation to the term “arising out of,” such that, NYCHA contends, the OCP policy should be read as admitting of “the possibility that [plaintiff’s] injury arose out of NYCHA’s insufficient ‘general supervision’ of ASSI.” ; Hamm Affirmation, ¶ 22. NYCHA then concludes that, under this interpretation, the Scottsdale defendants would still owe it a duty to defend, and possibly to indemnify, because it would be within the terms of coverage. NYCHA is incorrect. Its argument focuses entirely on the concept of its own “acts or omissions in connection with the general supervision of ASSI,” and posits that Chunn’s injury could have been caused by “ASSI’s non-negligent act.” This argument is fundamentally unsound because: 1) the above-cited provision of the OCP policy clearly contemplates some quantum of negligent behavior on the part of the “contractor” (i.e., ASSI); and 2) the First Department has already determined that ASSI was not negligent. Therefore, the court rejects NYCHA’s argument.

In conclusion, the court finds that the First Department’s 2011 ruling dismissing NYCHA’s claims against ASSI has effectively superceded the 2008 ruling that required the Scottsdale defendants to furnish NYCHA with a defense in the Chunn action. As a result of this supervening change, the Scottsdale defendants no longer have a duty to defend NYCHA. Such a supervening change affords the Scottsdale defendants sufficient grounds to support their request to reargue the portion of their previous cross motion for summary judgment (motion sequence number 005) to dismiss NYCHA’s claims against them. CPLR 2221. Accordingly, the court finds that the instant motion should be granted, that the former motion should also be granted, and that the third-party action against the Scottsdale defendants should be dismissed.

NYCHA’s Cross Motion

In its cross motion, NYCIA seeks an “interim judgment” for money damages in the amount of \$197,207.08, representing the sum that it claims to have expended thus far on the costs of defending itself against Chunn’s complaint. NYCHA does not identify a basis for this request, but merely notes that the court previously denied the request in its decision of June 15, 2009, and asserts that “the time has now come for a judgment in favor of NYCHA” because “the action by plaintiff against NYCHA has now been settled.” Thus, it would appear that NYCHA’s cross motion is in the nature of a motion to renew, and, as such, may be granted upon a showing that there are “material facts which, although extant at the time of the original motion, were not then known to the party seeking renewal and, consequently, were not placed before the court.” *Matter of Beiny*, 132 AD2d at 209-210, *supra*. Here, NYCHA presents “copies of statements rendered and other bills for fees and disbursements incurred ... in defense of the Chunn Action, excluding fees and disbursements incurred in prosecuting the third-party action against the insurers.” NYCHA then asserts that these fees, and the hourly rates for legal work charged by NYCHA’s counsel from which they were calculated were “clearly reasonable.” Hamm Affirmation, ¶ 13. The Scottsdale defendants reply that NYCHA has failed to present any authority to support this allegation, or to afford a rationale for reconsidering the portion of this court’s June 15, 2009 decision that found that a hearing was required in order to determine the amount and reasonableness of any compensation due to NYCHA. NYCHA heatedly replies that defendants’ “demand for an inquest ... should be absolutely rejected” because “there have been three court orders directing [the Scottsdale defendants] to provide for NYCHA’s defense.” Hamm Reply Affirmation, ¶ 6. The court is not moved by this histrionic argument. All of the aforementioned court orders clearly required that a hearing be held on the amount and

reasonableness of any legal bills that NYCHA should care to submit. Thus, NYCHA has failed to demonstrate that it is entitled to the entry of the \$197,207.08 “interim judgment” that it requests in its cross motion. Instead, the court adheres to its June 15, 2009 decision requiring a hearing on the issue of NYCHA’s defense costs. The court further finds that this issue should be submitted to a Special Referee to hear and report on.

In closing, the court takes note of the Scottsdale defendants’ opposition argument that its obligation to pay for NYCHA’s defense should be deemed to have been “cut off” as of July, 2008 - the date that the issue of whether or not the Scottsdale defendants owed NYCHA a defense was originally put before this court. The Scottsdale defendants contend that the First Department’s 2011 decision, which modified this court’s June 15, 2009 order and dismissed NYCHA’s claims against ASSI, “relates back” to so much of this court’s order as found that defendants owed NYCHA a defense. However, this argument is flawed. The First Department’s 2011 decision only dismissed NYCHA’s claims against ASSI. NYCHA’s claims against the Scottsdale defendants were not disposed of until the entry of this decision. Thus, the Scottsdale defendants remained under the duty to pay for NYCHA’s defense of the Chunn action until the date this decision was entered. Accordingly, the court finds that NYCHA is free to present any bills for expenses that were incurred up to this date at the referee’s hearing.

DECISION

ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the motion, pursuant to CPLR 2221, of second third-party defendants National Insurance Company and Scottsdale Insurance Company is severed and granted to the extent that said third-party defendants’ earlier cross motion, pursuant to CPLR 3212, is

reinstated, and said third-party defendants are awarded summary judgment dismissing the third-party complaint, together with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the cross motion of the defendant/second third-party plaintiff New York City Housing Authority is granted solely to the extent that the issue of the calculation of the amount of attorney's fees that said defendant/second third-party plaintiff incurred in defending itself in the action bearing Index Number 116764/06 is referred to a Special Referee to hear and decide and enter a judgment thereon; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 311) to arrange a date for the reference to a Special Referee

Dated: New York, New York


November 3, 2011

FILED

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NEW YORK
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ENTER:



Hon. Louis B. York, J.S.C.