

McCloskey v Vornado Realty Trust

2014 NY Slip Op 31600(U)

June 25, 2014

Supreme Court, New York County

Docket Number: 104672/2009

Judge: Jeffrey K. Oing

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

PRESENT: Jeffrey K. Oing _____
Justice

PART 48

Index Number : 104672/2009
MCCLOSKEY, ROBERT V.
vs
VORNADO REALTY TRUST
Sequence Number : 006
REARGUMENT/RECONSIDERATION

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

"This motion is decided in accordance with the annexed decision and order of the Court."

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

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JUN 25 2014

Dated: 6/24/14

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NEW YORK

JEFFREY K. OING, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

-----x
ROBERT V. MCCLOSKEY,

Plaintiff,

-against-

VORNADO REALTY TRUST, MERCHANDISE MART
PROPERTIES, INC., MMPI PIERS, LLC,
ENK INTERNATIONAL, LLC, GLOBAL
EXPERIENCE SPECIALISTS, INC. F/K/A
GES EXPOSITION SERVICES, INC.,
CITADEL SECURITY AGENCY, and
GUARDSMARK, LLC,

Defendants.

Index No.: 104672/09

Mtn Seq. No. 006

DECISION AND ORDER

FILED

JUN 25 2014

COUNTY CLERK'S OFFICE
NEW YORK

-----x
VORNADO REALTY TRUST, MERCHANDISE MART
PROPERTIES, INC., and MMPI PIERS LLC,

Third-Party
Plaintiffs,

-against-

PORT PARTIES, INC., CITADEL SECURITY
AGENCY, AND GES EXPOSITION SERVICES, INC.

Third-Party
Defendants.

-----x
T & H SECURITY, INC. D/B/A CITADEL
SECURITY AGENCY S/H/A CITADEL
SECURITY AGENCY,

Second Third-Party
Plaintiff,

-against-

GUARDSMARK, LLC,

Second Third-Party
Defendant.

-----x

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JEFFREY K. OING, J.:

Third-party defendant, Port Parties, Inc. ("Port Parties"), moves, pursuant to CPLR 2221, for an order granting it leave to reargue a portion of this Court's prior decision and order, entered March 31, 2014, and upon re-argument, granting that portion of Port Parties' motion seeking dismissal of defendants/third-party plaintiffs', Vornado Realty Trust ("Vornado"), Merchandise Mart Properties, Inc. ("Merchandise Mart"), MMPI Piers LLC ("MMPI") (collectively, "third-party plaintiffs"), claim for breach of contract.

Port Parties claims that in its prior motion for summary judgment it sought dismissal of all breach of contract claims as to the general liability policy issued to Port Parties in effect on the date of loss. Port Parties maintains that any contractual obligation that it might have had to name Vornado, Merchandise Mart, or MMPI as an additional insured was complied with because the policy contained a blanket additional insured endorsement. Port Parties annexes a copy of the insurance policy at issue as Exhibit R to its moving papers.

In this Court's prior decision and order, I denied that portion of Port Parties' motion for summary judgment which sought dismissal of third-party plaintiffs' claim for breach of contract (Moving Papers, Ex. C). Port Parties argues that this Court erred in failing to grant that portion of its motion because in

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issuing its decision, this Court erroneously referenced Section 7 of Port Parties' agreement with Merchandise Mart which provides that Port Parties:

agrees to indemnify, defend and hold [MMPI, Merchandise Mart, and Vornado] ... harmless from any and all claims, losses, costs, expenses and fees, which may arise from injuries to persons or property damage as a consequence of [Port Parties'] services under this Agreement or arising out of the negligent acts or omissions of [Port Parties], its employees and/or agents in conjunction with the foregoing.

(Moving Papers, Ex. C, pp. 20-21).

In the original motion, Port Parties argued that

All Breach of Contract Claims should be dismissed as the general liability policy issued to Port Parties which was in effect on the date of loss [contains] a blanket additional insured endorsement. Therefore, any contractual obligation that Port Parties might have had to name Vornado Realty Trust, Merchandise Mart Properties, Inc. and/or MMPI Piers LLC as an additional insured was complied with.

(Moving Papers, Ex. A, ¶ 29).

Putting aside that Port Parties' sought that "All Breach of Contract Claims should be dismissed," Port Parties argues that it never moved to dismiss third-party plaintiffs' third cause of action for contractual indemnification, but instead moved to dismiss the fourth cause of action for failure to procure insurance. And, in fact, Port Parties claims that it did procure insurance, and that the general liability policy issued to it contained a blanket additional insured endorsement. Thus, any contractual obligation that Port Parties might have had to name

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the third-party plaintiffs as additional insureds was complied with.


Port Parties' motion to reargue is denied. While the policy at issue contains an additional insured endorsement that provides the name of the additional insured "[a]s required by written contract signed by both parties prior to loss," Vornado, Merchandise Mart, and MMPI argue that Port Parties' insurance carrier has never agreed to assume the defense and indemnification for third-party plaintiffs and the record fails to indicate why that insurance carrier is not defending and indemnifying them. As such, there is an issue of fact as to whether Port Parties did what they were required to do to both procure insurance, and give notice to their insurance carrier of plaintiff's accident.

Accordingly, it is hereby

ORDERED that third-party defendant Port Parties' motion to reargue is denied.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 6/24/14


HON. JEFFREY K. OING, J.S.C.

FILED

JUN 25 2014

COUNTY CLERK'S OFFICE
NEW YORK