

Lala v Kensington Ins. Co.

2014 NY Slip Op 32075(U)

July 31, 2014

Sup Ct, NY County

Docket Number: 150903/2013

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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IRIR LALA and FITIMTAR LALA,

Plaintiffs,

- v -

KENSINGTON INSURANCE COMPANY and BKB
INSURANCE AGENCY, LLC.

Defendants.

-----X
BKB INSURANCE AGENCY, LLC,

Third-Party Plaintiff,

- v -

CONCRETE SOLUTIONS CONTRACTING LLC

Third-Party Defendant.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Index No.
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**DECISION
and ORDER**

Mot. Seq. 001, 002

Plaintiffs Ilir Lala and Fatimtar Lala (“Plaintiffs”) bring this action for property damages allegedly resulting from a fire on December 30, 2012 (the “Fire”) at Plaintiffs’ residential property located at 132 Shawnee Avenue, Yonkers, New York (the “Property”). Plaintiffs seek recovery based on a homeowner insurance policy that defendant Kensington Insurance Company (“Kensington”) issued to Plaintiffs for the Premises. Plaintiffs claim that this policy was issued through Kensington’s broker, defendant BKB Insurance Agency, LLC (“BKB”), and that BKB negligently failed to obtain proper insurance coverage for Plaintiffs.

Defendant/Third-Party Plaintiff BKB Insurance Company (“BKB”) moves for an order pursuant to CPLR §§ 3214, 3126, and 3101: (a) Directing and compelling Plaintiffs to serve responses to BKB’s set of interrogatories dated September 18, 2013; and (b) awarding to BKB the reasonable costs, fees and expenses in making the instant motion (Mot. Seq. #001).

CPLR § 3101(a) generally provides that, “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has held that the term “material and necessary” is to be given a liberal interpretation in favor of the disclosure of “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity,” and that “[t]he test is one of usefulness and reason” (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]).

CPLR § 3130 and 3131 permit a party to serve interrogatories that “relate to any matters embraced in the disclosure requirements of [CPLR §3101]”. However, a party is not required to respond to discovery demands which are “palpably improper.” A demand is palpably improper if it seeks information which is irrelevant or confidential, or is overbroad and unduly burdensome (*Gilman & Ciocia, Inc. v. Walsh*, 2007 NY Slip Op 8410, *1 [2nd Dept. 2007]).

BKB argues that Plaintiffs failed to fully respond to BKB’s discovery requests 2 and 5. BKB’s interrogatory 2 requests that Plaintiffs “identify all persons whom you believe possess knowledge of the facts relevant to the subject matter of this case, and for each such person, summarize the knowledge which you believe he or she possesses.” BKB argues that, although Plaintiffs identified several persons responsive to this demand, they failed to summarize the knowledge which they believe each person may have, and that, as a result, Plaintiffs failed to fully respond to this interrogatory.

BKB argues that Plaintiffs’ response to BKB’s Interrogatory 5, which requests that Plaintiffs identify communications between Plaintiffs, or anyone acting on their behalf, and BKB, is deficient in that Plaintiffs did not include the dates of the emails provided in response to this interrogatory, which BKB specifically requested and because Plaintiffs’ response “only shows the portion of the email visible on the screen leaving many of the printed emails clearly incomplete.”

BKB's Interrogatory 7 asks whether Plaintiffs' claim that BKB was aware of the construction on the property and further asks that Plaintiffs provide certain specific details regarding their claim BKB was aware of the same. BKB argues that Plaintiffs responded by claiming that BKB was aware of the construction due to "conversations with plaintiff" but fail to provide any of the requested details regarding these conversations, and that, as a result, Plaintiffs have failed to fully respond to this interrogatory.

BKB's Interrogatory 25 seeks information regarding Plaintiffs' responses to BKB's Notice to Admit, dated September 18, 2013. Specifically, BKB's Interrogatory 25 asks that Plaintiffs explain the basis for each denial contained in their response to BKB's Notice to Admit.

BKB's Interrogatory 26 asks that Plaintiffs specify how BKB "failed to procure and secure proper and adequate coverage for plaintiffs' property, as needed, required, and understood," as alleged in paragraph 10 of Plaintiff's complaint. BKB argues that Plaintiffs' answer to this Interrogatory "essentially repeats the boilerplate allegation that BKB had asked Plaintiff to flesh out."

Plaintiffs move for an Order, pursuant to CPLR § 603, severing the Third Party action and, pursuant to CPLR § 1010, severing and ordering a separate trial of the Third Party action (Mot. Seq. # 002).

CPLR § 603 states:

In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

CPLR §1010 states:

The Court may dismiss a third-party complaint without prejudice, order a separate trial of the third-party claim or of any separate issue thereof, or make such other order as may be just. In exercising its discretion, the court shall consider whether the controversy between the third-party

plaintiff and the third-party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party.

Plaintiffs claim that Plaintiffs' causes of action against Kensington and BKB for breach of insurance contract and failure to obtain proper insurance, respectively, are not related to BKB's third party action. Plaintiffs argue that BKB's third party action seeks subrogation against a construction company that BKB claims caused the Fire, and that trying BKB's subrogation claims with Plaintiffs' causes of action would cause unnecessary delay and create a substantial risk of confusing the trier of fact.

BKB, in turn, claims that third-Party defendant Concrete Solutions Contracting LLC ("Concrete Solutions") caused the Fire. BKB claims that Concrete Solutions, which is owned by Plaintiffs, performed construction work at the Premises and left various combustibles and solvents at the Premises. BKB claims that Concrete Solutions' combustibles and solvents caused the Fire and damages at issue, and that Concrete Solutions and its liability carrier are ultimately responsible for Plaintiffs' loss. BKB claims that there is a critical issue of the occupancy or vacancy of the building at the time of the Fire, and that severance is not in the interest of judicial economy. BKB argues that severance would waste judicial resources and risk the possibility of inconsistent verdicts because Plaintiffs' first-party action and BKB's third-party action arise out of the same Fire and involve the same damages, parties, and facts.

Wherefore it is hereby

ORDERED that BKB's motion is granted only to the extent that Plaintiffs are directed to supplement their responses to BKB's Interrogatories 2, 5, 7, 25, and 26; and it is further

ORDERED that Plaintiffs' motion to sever is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: ~~August~~ ^{July} 31, 2014



EILEEN A. RAKOWER, J.S.C.