

**Illinois Union Ins. Co. v Grandview Palace  
Condominiums Assoc. Corp.**

2014 NY Slip Op 32892(U)

November 12, 2014

Supreme Court, New York County

Docket Number: 155113/2012

Judge: Jeffrey K. Oing

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

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ILLINOIS UNION INSURANCE COMPANY AND  
GREAT AMERICAN INSURANCE COMPANY OF  
NEW YORK,

Plaintiffs,

-against-

GRANDVIEW PALACE CONDOMINIUMS  
ASSOCIATION CORP. a/k/a GRANDVIEW  
PALACE OF NEW YORK CONDOMINIUM,

Defendants.

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Mtn Seq. Nos. 007 & 008

**DECISION AND ORDER**

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**JEFFREY K. OING, J.:**

**Motion Seq. No. 007**

Non-party Western Heritage Insurance Company ("Western Heritage") moves pursuant to CPLR 511(a) and (b) to transfer venue of the action pending in Supreme Court, Sullivan County, Index No. 273/2013 (Action #2) to New York County, and pursuant to CPLR 602(a) and (b) to consolidate for joint trial and joint discovery Action #2 with this action (Action #1).

**Motion Seq. No. 008**

Non-party National Surety Corporation ("National Surety") moves for the same relief sought by Western Heritage with respect to National Surety's action pending in Supreme Court, Sullivan County, Index No. 2253/2013 (Action #3).

Motion sequence nos. 007 and 008 are consolidated for disposition.

### Undisputed Facts

Briefly, these actions arise from the April 14, 2012 fire which destroyed the Grandview Condominium Complex (NYSCEF Dkt No. 113 at pp. 5-7). Plaintiff insurers, Illinois Union Insurance Company and Great American Insurance Company of New York (collectively "Illinois Union"), commenced this action before Actions #2 and #3. Further, policyholder, Grandview Palace Condominiums Association Corp. ("Grandview"), is the defendant in all three actions. In this action (Action #1), Illinois Union assert the following three causes of action for declaratory relief:

- 1) the policies are void ab initio because of Grandview Palace's material misrepresentations;
- 2) there is no liability because Grandview Palace breached its contracts with plaintiffs by failing to comply with the protective safeguards provisions of the policies; and
- 3) there is no liability because Grandview Palace breached its contracts with plaintiffs by failing to comply with the loss conditions of the policies.

(NYSCEF Dkt No. 1). With respect to the first cause of action, Illinois Union seeks rescission of the insurance policy it issued to Grandview on the ground that Grandview purportedly made material misrepresentations in its insurance application regarding the existence of allegedly uncorrected fire code

violations and the presence within the complex of certain fire alarm and sprinkler systems.

In Action #2 and #3, Western Heritage's and National Surety's single cause of action is identical to the one asserted by Illinois Union (NYSCEF Dkt Nos. 115, Ex. B, 129, Ex. C).

#### Discussion

In opposing consolidation, Illinois Union argues that these actions involve different policies, each with their unique terms, conditions, exclusions and endorsements (NYSCEF Dkt No. 125, ¶ 5), while Grandview argues that consolidation "could be confusing to the jury" because the consolidation would require the "jury to have to distinguish between different policies, different policy language, and different proofs for each action" (Defendant Opposition Memorandum, NYSCEF Dkt No. 120, at p. 14).

Those arguments are unavailing. To be sure, these actions deal with four different insurance policies. But that is the only difference. The record demonstrates that although different policies are implicated in these actions the singular issue to be determined with respect to the cause of action identical in all three actions is whether defendant policyholder made material misrepresentations in its insurance application that would warrant a judicial declaration that the policies of insurance are void ab initio. Indeed, were these actions not consolidated, the

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true risk would be inconsistent findings among the three actions on this issue based on virtually the same evidence, namely witnesses and documentary proof (NYSCEF Dkt No. 52, 113, 215). Further, arguments related to discovery issues and delay are not impediments to consolidation. Those issues will be addressed expeditiously upon consolidation so as to minimize any purported delay in preparing these actions for trial.

Accordingly, it is

ORDERED that Western Heritage's motion (mtn seq. no. 007) is granted in all respects; and it is further

ORDERED that National Surety's motion (mtn seq. no. 008) is granted in all respects; and it is further

ORDERED that Action #2 (Supreme Court, Sullivan County, Index No. 273/2013):

Western Heritage Insurance Company,  
Plaintiff,  
-against-  
Grandview Palace of New York  
Condo Association,  
Defendant.

and Action #3 Supreme Court, Sullivan County, Index No.  
2253/2013:

National Surety Corporation,  
Plaintiff,  
-against-  
Grandview Palace Condominiums Association  
Corp. a/k/a Grandview Palace of New York  
Condo Association,  
Defendant.

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are hereby consolidated with this action; and it is further

ORDERED that this action, and Action #2 and Action #3 shall be consolidated under this Index No. 155113/2012, with each action bearing its own caption; and it is further

ORDERED that the Clerk of Supreme Court, Sullivan County, shall transfer the papers on file under Index No. 273/2013 to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the Clerk of Supreme Court, Sullivan County, shall transfer the papers on file under Index No. 2253/2013 to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movants are directed to serve a copy of this order with notice of entry on the County Clerk (Room 141B), who is respectfully directed to consolidate the papers in the actions hereby consolidated and shall mark the court records to reflect the consolidation; and it is further

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ORDERED that movants are directed to serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158), who is respectfully directed to mark the court records to reflect the consolidation; and it is further

ORDERED that counsel are directed to appear for a status conference in Part 48, Room 242, on November 21, 2014 at 10:30 a.m.

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

Dated: 11/12/14

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