

Castle Oil Corp. v ACE Am. Ins. Co.

2014 NY Slip Op 33721(U)

March 12, 2014

Supreme Court, Westchester County

Docket Number: 55812/13

Judge: Mary H. Smith

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This opinion is uncorrected and not selected for official publication.

DECISION AND ORDER

FILED & ENTERED
3 / 12 / 14

To commence the statutory period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK IAS PART, WESTCHESTER COUNTY

Present: HON. MARY H. SMITH
Supreme Court Justice

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CASTLE OIL CORPORATION,

Plaintiff,

-against-

ACE AMERICAN INSURANCE COMPANY,

Defendant.

-----X

The following papers numbered 1 to 8 were read on this motion by defendant for reargument of this Court's Decision and Order, dated January 2, 2014.

Papers Numbered

Notice of Motion - Affirmation (Rocco) - Exhs. (1-5) - Memorandum of Law	1-4
Answering Affirmation (Halprin) - Exh. - Memorandum of Law	5-7
Replying Memorandum of Law	8

Upon the foregoing papers, it is Ordered that this motion by defendant for reargument of this Court's 11-page Decision and Order, dated January 2, 2014, is denied. Defendant has failed to demonstrate that this Court, in reaching its prior Decision and Order, had misapprehended any of the relevant facts or had misapplied any controlling

principal of law. See CPLR 2221, subd. (d), par. 2; Pro Brokerage Inc. v. Home Insurance Co., Inc., 99 A.D.2d 971 (1st Dept. 1984); Foley v. Roche, 68 A.D.2d 558, 567 (1st Dept. 1979); see, also Amato v. Lord & Taylor, Inc., 10 A.D.3d 374 (2nd Dept. 2004). Reargument does not afford a party successive opportunities to reargue that which has been decided. See Mazinov v. Rella, 79 A.D.3d 979 (2nd Dept. 2011); Pro Brokerage Inc. v. Home Insurance Co., Inc., *supra*.

Contrary to defendant's argument at bar, the Court, in rendering its Decision, had not overlooked established principles of insurance law, as clearly evidenced by the Court's specifically having noted in its underlying Decision and Order that "insurance policies are to be interpreted so as to give effect to the intent of the parties as expressed in the clear language of the policy, and so that no words are rendered meaningless." Further, it appears to be defendant which is ignoring contract principles when it argues that a deposition of Mark McDonnell, its insurance broker, must be allowed to proceed so that the Court hears testimony regarding the parties' intended meaning of the policy flood deductible. As this Court previously had noted, any ambiguities existing in the policy are to be construed against the drafter - in this case defendant - and this court finds no basis to resort to extrinsic evidence.


Moreover, defendant's protestation to the contrary notwithstanding, this Court had not overlooked the policy endorsement providing that the deductible applicable to flood loss in special flood hazard areas is equal to "2% of the total insurable values at risk per location subject to a minimum of \$250,000.00." Indeed, the Court expressly had noted the policy's inclusion of this endorsement at page 2 of its Decision and Order, and thereafter had stated on page 3 thereof defendant's position, as expressed through its agent's

December 17, 2012, correspondence to plaintiff, that no policy coverage exists for plaintiff's underlying claim upon application of this 2 percent deductible to this special flood hazard located property.

Contrary to defendant's argument, this Court has not re-written the policy, and its interpretation of the deductible provision did not render this contractual 2 percent calculation language "superfluous." Rather, plaintiff's position, as adopted by the Court, acknowledges that a 2 percent deductible applies to the "total insurable values at risk for flood loss" and applies it such that if that amount is less than \$250,000.00 then the deductible is \$250,000.00. Therefore, because 2% of \$2,500,000 is less than \$250,000.00, the deductible for the underlying loss is \$250,000.00. Defendant misrepresents that the Court's interpretation "yields a fixed \$250,000 flood deductible for all special flood hazard area locations ..."¹

The parties shall appear in the Compliance Conference Part, Room 800, at 9:30 a.m., on April 7, 2014.

Dated: March 12, 2014
White Plains, New York



MARY H. SMITH

J.S.C.

¹Parenthetically, it had been defendant that had calculated and set the \$250,000.00 minimum deductible.

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