

City of New York v American Safety Cas. Ins. Co.

2015 NY Slip Op 30863(U)

May 19, 2015

Supreme Court, New York County

Docket Number: 450214/2012

Judge: Shirley Werner Kornreich

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
THE CITY OF NEW YORK,

Plaintiff,

-against-

AMERICAN SAFETY CASUALTY INSURANCE
COMPANY,

Defendant.

-----X
AMERICAN SAFETY CASUALTY INSURANCE
COMPANY,

Third-Party Plaintiff,

-against-

PULLINI SUBSURFACE CONTRACTORS, INC.,
and EDWARD PULLINI,

Third-Party Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.:

Third-Party Plaintiff American Safety Casualty Insurance Company (ASCI) moves, pursuant to CPLR 3212, for summary judgment against third-party defendants Pullini Subsurface Contractors, Inc. (PSC) and Edward Pullini (Pullini) (collectively, the Pullini Defendants). The Pullini Defendants, who are currently in contempt of court,¹ did not oppose this motion. For the reasons that follow, ASCI's motion is granted on default.

I. Background and Procedural History

Familiarity with this action is presumed. In short, the City of New York (the City) sued ASCI to enforce permit bonds. ASCI, in turn, sued its subcontractors, the Pullini Defendants, for indemnification under their Indemnity Agreement. By order dated January 10, 2013, the court

¹ See Dkt. 99.

Index No.: 450214/2012

DECISION & ORDER

granted summary judgment in favor ASCI and against the Pullini Defendants in the amount of \$94,290, the amount of ASCI's damages incurred through July 2012.² See Dkt. 66. ASCI's claims for damages incurred from August 2012 onward, including attorneys' fees, was severed. ASCI now moves for summary judgment on those amounts, which total \$60,400.93.

II. Discussion

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material issues of fact. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman*, 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

² The court separately decided the summary judgment motions pertaining to the claims between the City and ASCI in an order dated March 8, 2013. See Dkt. 71, *aff'd* 119 AD3d 407 (1st Dept 2014). The City and ASCI have since settled. See Dkt. 102.

Summary judgment on liability has already been decided. As the court previously held, there is no question that the Pullini Defendants must reimburse ASCI for its liability to the City under the permit bonds and for its legal costs incurred in this action. As for damages, ASCI's counsel, Westerman Sheehy Keenan Samaan & Aydelott, LLP, submitted a detailed affidavit setting forth the extent of its legal work performed since August 2012. *See* Dkt. 108. The affidavit sets forth the work performed by each attorney at the firm, their legal experience, their hourly rate, the specific amounts of time spent on each matter and an explanation of what was done during that time and by whom. The bulk of the legal work pertained to the summary judgment motion, the appeal, and the contempt application, the latter of which was only necessitated by virtue of the Pullini Defendants' violation of court orders. In total, ASCI's legal fees totaled \$58,800.93. After reviewing the record submitted by ASCI, which is un rebutted by the Pullini Defendants (who have defaulted again),³ the court finds this amount to be reasonable. ASCI also seeks to recover an additional \$1,600, the settlement amount it paid to the City following the appeal. Robert D'Olympio, a Vice President at ASCI, submitted an affidavit attesting that the \$58,800.93 and the \$1,600, totaling \$60,400.93, have been paid.⁴ *See* Dkt. 107. Accordingly, it is

ORDERED that the motion by third-party plaintiff American Safety Casualty Insurance Company for summary judgment against third-party defendants Pullini Subsurface Contractors,

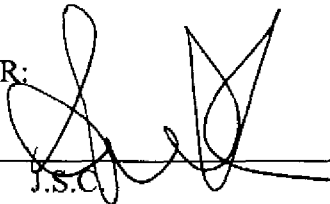
³ It should be noted that service of this motion upon the Pullini Defendants was effectuated by e-filing. Sigismondo F. Renda, Esq., an attorney at Renda & Associates, P.C., represented the Pullini Defendants in this action and is still counsel of record. No order permitting them to withdraw has ever been issued (nor did Mr. Renda ever move to withdraw). Nonetheless, to ensure that both Mr. Renda and the Pullini Defendants are made aware of this order, ASCI shall serve both of them with a copy of this decision and notice of entry by overnight mail within 5 days of the entry of this order on the NYSCEF system.

⁴ The only exception being \$711.07, a recent legal bill ASCI is in the process of paying.

Inc. and Edward Pullini is granted, and the Clerk is directed to enter judgment in favor of said third-party plaintiff and against said third-party defendants in the amount of \$60,400.93.

Dated: May 19, 2015

ENTER:



J.S.C.
SHIRLEY WERNER KORNREICH
J.S.C