SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN **PART** 58
Justice

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UNION MUTUAL FIRE INSURANCE COMPANY,

Plaintiff,

- v -

RUDOLF KLEIN, DEVORA KLEIN, BENGAL CONTRACTING, CO. D/B/A RAFIQUL ANWAR, RAFIQUAL ANWAR, ARCH INSURANCE COMPANY, SHUKHRAT ESHONKULOV

Defendant.

INDEX NO. 655979/2016

MOTION DATE 7/14/2017

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106

were read on this application to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is

Motion to reargue is granted. In its earlier decision, this Court ruled that "affording the Complaint a liberal construction and every favorable inference, combined with the insurance item listed in the agreement, the Court finds that plaintiff has stated a cause of action in this matter." In its earlier decision, this Court held that the line item of insurance in the contract was sufficient to state a cause of action whether the Klein's were additional insureds.

Generally, in New York, a party that is not named an insured or additional insured on the face of the policy is not entitled to coverage (*Moleon v Kreisler Borg Florman Gen. Const. Co., Inc.*, 304 AD2d 337, 339 [1st Dept 2003]). In *Gen. Motors, LLC v B.J. Muirhead Co., Inc.*, the Appellate Division, Fourth Department expressly stated "[A] provision in a construction contract

cannot be interpreted as requiring the procurement of additional insured coverage unless such a requirement is expressly and specifically stated. In addition, contract language that merely requires the purchase of insurance will not be read as also requiring that a contracting party be named as an additional insured" (120 AD3d 927, 928–29 [4th Dept 2014]). Similarly, "[A] reservation contract for the lease of construction equipment will not require the procurement of additional insured coverage "unless such a requirement is expressly and specifically stated" (*Clavin v CAP Equip. Leasing Corp.*, 156 AD3d 404, 405 [1st Dept 2017]). The Appellate Division, went on to say "[T]he insurance procurement provision at issue states that Schiavone is to procure insurance "for the benefit of" CAP Rents. There is no other provision in the reservation contract naming CAP Rents as an additional insured. Absent any express and specific language requiring that CAP Rents be named as an additional insured, the reservation contract at issue does not require that Schiavone procure additional insured coverage" (*id.; see also 140 Broadway Prop. v Schindler El. Co.*, 73 AD3d 717 [2d Dept 2010]).

Here, it is undisputed that the Klein's were never expressly named as additional insureds. The policy itself was amended unambiguously to include persons or organizations who are required under a written contract to be named as additional insureds. However, we don't have a written contract that requires someone to be an additional insured. All we have is a written contract with the word insurance. It does not state what the insurance is for and who the insurance is supposed to cover. It does not expressly and specifically state that the Klein's are to be additional insureds. Accordingly, the motion to dismiss by Arch is granted as they were not required to provide coverage under the terms of the policy with Bengal.

Reliance on *Southwest Mar. and Gen. Ins. Co. v Preferred Contractors Ins. Co.*, is misplaced (143 AD3d 577 [1st Dept 2016]). Here, although that there was a certificate of insurance that referenced the Klein's, said certificate was insufficient to confer coverage where the insurance policy itself does not cover the Klein's (*Sixty Sutton Corp. v Illinois Union Ins. Co.*, 34 AD3d 386 [1st Dept 2006]; *see also Moleon v Kreisler Borg Florman Gen. Const. Co., Inc.*, 304 AD2d 337, 339 [1st Dept 2003]). In Southwest, given the ambiguity in the blanket endorsement language, the Court found that plaintiffs' identification on the certificates of insurance, was relevant to whether plaintiffs' exclusion from the endorsements was perhaps an inadvertent error (*id.*). Here, the language of the blanket Additional Insured Endorsement is clear. Furthermore, the certificate clearly said that it was issued for information only and conferred no rights. The certificate also included a statement that it did not amend, extend or alter the coverage and that *if* the certificate holder was an additional insured, the policy must be endorsed.

Union's cross-motion for summary judgment is also granted. In opposition to the cross-motion, the Klein's conceded that "Union Mutual's cross-motion for summary judgment on these two grounds is without merit unless the court grants reargument to Arch and thereafter dismisses the causes of action against Arch." As the Court has granted the motion to reargue for the reasons stated above, the cross-motion for summary judgment is granted.

For the above reasons, it is therefore

ORDERED, defendant Arch's motion to reargue is granted and, upon reargument, the Complaint as to Arch is dismissed; and it further

ORDERED, that plaintiff's cross-motion for summary judgment is granted; and it is further

ORDERED, that this matter is dismissed.

This constitutes the decision and order of the Court.

3/5/2018
DATE

DAVID BENJAMIN COHEN, J.S.C.
HON. DAVID B. COHEN
J.S.C.

CHECK ONE:	X	CASE DISPOSED			[redacted]		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		DO NOT POST			FIDUCIARY APPOINTMENT		REFERENCE