

Damon G. Douglas Co. v Arch Specialty Ins. Co.
2019 NY Slip Op 32090(U)
July 12, 2019
Supreme Court, New York County
Docket Number: 655491/2018
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X
DAMON G. DOUGLAS COMPANY, ADELPHI UNIVERSITY,
TRUSTEES OF ADELPHI UNIVERSITY,

Plaintiffs,

- v -

ARCH SPECIALTY INSURANCE COMPANY, NATIONAL UNION
FIRE INS. CO., MT. HAWLEY INS. CO., LIBERTY MUTUAL FIRE
INS. CO., ISLAND STRUCTURES INC., IRON INC., PRAVCO,
INC.,

Defendants.

INDEX NO. 655491/2018
MOTION DATE 01/08/2019
MOTION SEQ. NO. 001

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23,
24, 25, 26, 27, 28, 29, 30, 31, 32, 40, 41, 42, 43, 44, 45

were read on this motion to DISMISS

Upon the foregoing documents, it is hereby ordered that defendant Arch Specialty Insurance Company's motion to dismiss is denied.

Background

This action addresses an insurance coverage dispute arising out of the alleged personal injuries of Frank Giattino while he was working on a construction project at Adelphi University's campus in Garden City, New York on May 23, 2014. In a separate action to recover for his injuries ("the Underlying Action"), Giattino sued Adelphi University ("Adelphi"), the Trustees of Adelphi University ("Trustees") and Damon G. Douglas Company ("Douglas").

Adelphi hired Douglas as the general contractor of the construction project. Douglas then subcontracted with defendant Pravco, Inc. ("Pravco") for Pravco to provide the structural steel work at the construction project. Pravco then subcontracted with defendant Island Structures Inc. ("Island Structures"), which, in turn, then subcontracted with defendant Iron Inc. to provide structural steel work at the construction site. At the time Giattino allegedly sustained his injuries, Iron Inc. employed him.

Defendant Arch Specialty Insurance Company ("Arch") had issued a general insurance policy ("the Arch policy") to Island Structures. Plaintiffs commenced this action seeking a declaratory judgment that plaintiffs qualify as additional insureds on the Arch policy, and that the personal injury claim filed against them by Giattino, an employee of Iron Inc., is covered under the Arch policy.

Arch now moves, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the claims asserted against it by the Trustees and Douglas on the ground that the Trustees and Douglas are not additional insureds on the Arch policy.

The Arch Policy

Arch issued a policy of general liability insurance to Island Structures for the period from March 15, 2014 through March 15, 2015. The Arch Policy contains a blanket additional insured endorsement which reads, in pertinent part:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION II – WHO IS INSURED is amended to include as additional insureds those persons or organizations who are required under a written contract with you to be named as an additional insured, but only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” caused in whole or in part, by your acts or omissions or the acts and omissions of your subcontractors:

- (a) In the performance of your ongoing operations or “your work” that has been completed; or
- (b) In connection with your premises owned or rented to you.

(NYSCEF Doc. No. 23).

The Pravco/Island Structures Subcontract

The subcontract between Pravco and Island Structures defines Pravco as the “Contractor” and Island Structures as the “Subcontractor.” Although the subcontract is littered with references to the “Owner,” it fails to define the term.¹ Article 2 of the subcontract reads, in pertinent part, as follows:

CONTRACT DOCUMENTS – The Plans, Specifications, General Conditions, Specific Conditions, Prime Contract, all amendments, alternates and addenda, and the Contractor’s Safety Program are incorporated herein by reference. (All the aforesaid, including this Agreement, are hereinafter sometimes referred to as the Contract Documents.) The Subcontractor agrees to be bound to the Contractor by each and all of the terms and provisions of the Prime Contract and the other Contract Documents to the same extent to

¹ Both parties seemingly agree that “Owner” includes Adelphi University. Plaintiffs argue that “Owners” also includes the Trustees. Arch asserts that the Trustees are not “owners” as defined in the subcontract.

which the Contractor is bound to the Owner, and to assume toward the Contractor all of the duties, obligations and responsibilities that the contractor is required by the Contract Documents to assume toward the Owner. The Subcontractor further agrees that the Contractor shall have the same rights and remedies against the Subcontractor as the Owner has against the Contractor under the terms and provisions of the Prime Contract with the same force and effect as though every duty, obligation, responsibility, right or remedy were set forth herein in full.

Article 16 of the subcontract reads, in pertinent part, as follows:

The Subcontractor shall name the Contractor and the Owner and any other party required by the Contract Documents as additional Insured on all insurance policies, except Workers' Compensation. The additional Insured coverage which the Subcontractor is required to obtain for the Contractor and the Owner shall be primary and non-contributory from any other policies on which the Owner or Contractor is a named Insured. The additional Insured coverage shall include claims arising both during the ongoing operations performed by the Subcontractor under this Agreement and claims arising after the completion of the Subcontractor's operations performed under this Agreement. The Subcontractor and its insurers do hereby waive any and all rights of subrogation against Contractor, the Architect, the Owner and their insurers.

(NYSCEF Doc. No. 5).

Discussion

"It is well settled... that [t]hird persons who are covered under a liability insurance policy and are thus entitled to maintain an action on the policy must be ascertained from the intention of the parties to the policy, as determined from the four corners of the policy itself." Binasco v Break-Away Demolition Corp., 256 AD2d 291, 292 (2nd Dep't 1998) (finding that third-party was entitled to coverage as additional insured where Prime Contract was incorporated by reference into subcontract).

Similarly to Binasco, the record in the instant action evidences that the Prime Contract, between Adelphi and Douglas, was incorporated by reference into the subcontract between Pravco and Island Structures. The Prime Contract required Douglas, as general contractor, to require all subcontractors "to be bound by terms of the [Prime Contract] and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes towards the Owner and Architect." (NYSCEF Doc No. 41.) The Prime Contract also requires that the Contractor name the Owner as an additional insured. Accordingly, the policy documents, which incorporate by reference the Prime Contract, evidence the intent of the parties to require all subcontractors to

add the Owner and the general contractor as additional insureds, and Arch's motion to dismiss as to Douglas is denied.

Finally, the Prime Contract also requires the Contractor to, "to the fullest extent permitted law... indemnify, defend, protect and hold harmless Owner's officers, directors and trustees." Consequently, Arch's motion to dismiss as to the Trustees is denied.

Conclusion

For the reasons set forth herein, defendant Arch Specialty Insurance Company's motion to dismiss is denied.



<u>7/12/2019</u>					
DATE				HON. ARTHUR F. ENGORON	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	