

**Yee Lin v Nova Casualty Co.**

2019 NY Slip Op 32290(U)

July 29, 2019

Supreme Court, New York County

Docket Number: 151865/2014

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

YEE LIN, FUNG LIN,

Plaintiff,

- v -

NOVA CASUALTY COMPANY, 788 P&G LEXINGTON  
CORP. D/B/A WRAP N RUN, AIR MAX COOLING CORP

Defendant.

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INDEX NO. 151865/2014

MOTION DATE 07/25/2019

MOTION SEQ. NO. 005

DECISION + ORDER ON  
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178

were read on this motion to/for JUDGMENT - DEFAULT

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant Nova Casualty to enter a default judgment on its cross claim against defendant 788 P&G Lexington Corp. is granted; and it is further

ADJUDGED and DECLARED that defendant 788 P& G Lexington Corporation is obliged to provide a defense to, and provide coverage for, the plaintiffs Yee Lin and Fung Lee in Utica First Insurance Company a/s/o Green Gourmet, Inc. v Lyn, Index No. 152844/2014, such action pending in Supreme Court New York County; and it is further

ORDERED This matter having come on before this court on July 25, 2019 on motion and the court having on its own motion

determined to consider the appointment of a referee to determine as follows, and it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (b); it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of amount of reasonable attorneys' fees incurred by plaintiffs to date in defense of in Utica First Insurance Company a/s/o Green Gourmet, Inc. v Lin, and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated:

and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh) at the "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the balance of this action is severed and continued.

#### DECISION

This court's Order dated August 16, 2018, striking the "answer" to co-defendant 788 P&G Lexington was a non-sequitur as there is no requirement that there be an answer to a cross claim. Nevertheless, defendant 788 P&G Lexington Corp. admittedly failed to provide any discovery and even now offers

no defense to the provisions of its lease with plaintiff that provided that as tenant, it must defend and indemnify the owner-plaintiffs with respect to claims of third parties that such parties suffered property damage arising out of negligence of such tenant.

7/29/2019

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE