

<b>Bodlovic v Giannoutsos</b>
2019 NY Slip Op 34129(U)
June 28, 2019
Supreme Court, Queens County
Docket Number: 700868/18
Judge: Carmen R. Velasquez
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[\* 1]

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38  
Justice

-----x  
MIODRAG BODLOVIC and TATJANA PALIK-  
BODLOVIC,

Index NO. 700868/18

Plaintiffs,

Motion:  
Date: April 01, 2019

-against-

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FRANK GIANNOUTSOS, PARASKEVI GIANNOUTSOS  
and VASILIKI GIANNOUTSOS,

Defendants.

-----x  
FRANK GIANNOUTSOS, PARASKEVI GIANNOUTSOS  
and VASILIKI GIANNOUTSOS,

Third-Party Plaintiffs,

-against-

DZIDZI & SON LLC D/B/A GIGI SALON & SPA,

Third-Party Defendants.

-----x  
FRANK GIANNOUTSOS, PARASKEVI GIANNOUTSOS  
and VASILIKI GIANNOUTSOS,

Second Third-Party Plaintiffs,

-against-

UNITED STATES LIABILITY INSURANCE COMPANY,

Second third-Party Defendants.  
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FILED  
JUL 11 2019  
COUNTY CLERK  
QUEENS COUNTY

The following papers numbered EF23 to EF40 read on this motion by United States Liability Insurance Company ("USLIC") to dismiss the second third-party complaint.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits...	EF 23-34
Answering Affidavits - Exhibits.....	EF 36 38-39
Reply Affidavits.....	EF 40

Upon the foregoing papers it is ordered that this motion is determined as follows:

Plaintiffs in this negligence action seek damages for injuries sustained by Miodrag Bodlovic during the course of his employment at a salon operated by Dzidzi & Son, LLC d/b/a Gigi Salon & Spa ("Dzidzi"), located at 34-17 30<sup>th</sup> Avenue, in Queens, New York. The action of Tatjana Palik-Bodlovic is derivative. The Bodlovics initiated the main action with the filing of their Summons and Complaint against the owners of the premises, the Giannoutsos parties, on January 18, 2018. In their complaint, the Bodlovics allege that at approximately 9:45 a.m., on September 6, 2017, Mr. Bodlovic was injured when he operated a motorized gate at the premises while "acting within the scope and in furtherance of his employment with Dzidzi." As further provided in the complaint, "the motorized gate failed, malfunctioned and or broke striking plaintiff, Miodrag Bodlovic." The Bill of Particulars further explains that the "motorized rollup gate to the shop became dislodged or loose within its track and fell and struck the injured plaintiff." The First Third-Party Complaint, filed on May 9, 2018, was brought by the owner of the premises, the Giannoutsos parties, and seeks indemnification and contribution from Dzidzi pursuant to a lease agreement in place between Dzidzi and the Giannoutsos parties. The Second Third-Party Complaint, which is the subject of this summary judgment motion, was filed on August 21, 2018, by the Giannoutsos parties, and alleges that the Giannoutsos parties are entitled to additional insured coverage under the USLIC Policy issued to Dzidzi. USLIC moves to dismiss the second third-party complaint based upon the terms of the contract. The motion is opposed by the Giannoutsos parties and by the plaintiffs.

USLIC issued policy number BP1572986C to Dzidzi & Son, LLC d/b/a Gigi Salon & Spa ("Dzidzi"), for the period of December 21, 2016 through December 21, 2017 ("the Policy"). The Policy contains an endorsement BP 500 NY (08-12), entitled "Bodily Injury Exclusion- All Employees, Volunteer Workers, Temporary Workers, Causal Laborers, Contractors and Subcontractors", which provides:

Bodily Injury Exclusion - All Employees, volunteer workers, temporary workers, Casual Laborers, Contractors and Subcontractors

Section II- Liability, 1. Applicable to Business Liability Coverage. B. Exclusions, e. Employer's Liability is deleted in its entirety and replaced with the following:

E. Employer's Liability

1. "Bodily injury" to any "employee", "volunteer worker", "temporary worker" or "casual laborer" arising out of or in the course of:

(a) employment by any insured; or

(b) Performing duties related to the conduct of any insured's business;

2. "Bodily injury" to any contractor, subcontractor or any "employee", volunteer worker", "temporary worker" or "casual laborer" of any contractor or subcontractor arising out of or in the course of the rendering or performing services of any kind or nature whatsoever by such contractor, subcontractor or "employee", volunteer worker", "temporary worker" or "casual laborer" of such contractor or subcontractor for which any insured may become liable in any capacity; or

(3) Any obligation of any insured to indemnify or contribute with another because of damages arising out of such "bodily injury"; or

(4) "Bodily injury" sustained by the spouse, child, parent, brother or sister of any "employee", volunteer worker", "temporary worker" or "casual laborer" of any insured, or of a contractor, subcontractor or of any "employee", volunteer worker", "temporary worker" or "casual laborer" of any contractor or subcontractor as a consequence of any injury to any person as set forth in paragraphs 1 and 2 of this endorsement.

This exclusion applies to all claims and "suits" by any person or organization for damages because of such "bodily injury", including damages for care and loss of services and any claim under which any insured may be held liable under any Workers' Compensation law.

"Casual laborer" means any person providing work or materials to any insured for compensation of any type.

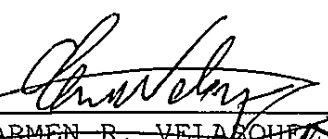
Under the terms of the USLIC policy's exclusion BP 500 NY (08-12), there is no coverage for liability causing "bodily injury" to "employees" when those injuries are sustained in the course of "employment by any insured" or "performing duties related to the conduct of any insured's business". Plaintiff Miodrag Bodlovic was injured when a motorized rollup gate to the shop became dislodged or loose within its track and fell and struck him. USLIC moves to dismiss the second third-party complaint based upon the terms of the Policy. The motion is opposed by the Giannoutsos parties and by the plaintiffs.

An exclusion from coverage "must be specific and clear in order to be enforced" (*Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 311 [1984]). An ambiguity in an exclusionary clause must be construed most strongly against the insurer (see *Ace Wire & Cable Co. v Aetna Cas. & Sur. Co.*, 60 NY2d 390, 398 [1983]; *Guachichulca v Laszlo N. Tauber & Assoc., LLC*, 37 AD3d 760 [2d Dept 2007]).

Here, the court finds that the exclusion set forth in the policy does not apply. As noted above, the exclusion is for bodily injury in the course of the employment. Plaintiff's injury occurred when the motorized rolled up security gate failed and struck the plaintiff. This type of incident was clearly not foreseeable in the course of the plaintiff's employment. Plaintiff was not specifically working as a contractor or laborer at the time of the incident.

Accordingly, the motion by USLIC to dismiss the second third-party complaint is denied.

Dated: June 28 , 2019

  
CARMEN R. VELASQUEZ, J.S.C.

FILED  
JUL 11 2019  
COUNTY CLERK  
QUEENS COUNTY