

193 Hooper St. Condo v Wesco Ins. Co.

2020 NY Slip Op 30156(U)

January 7, 2020

Supreme Court, New York County

Docket Number: 657266/2017

Judge: Robert R. Reed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X
193 HOOPER STREET CONDO

Plaintiff,

- v -

WESCO INSURANCE COMPANY,

Defendant.
-----X

INDEX NO. 657266/2017

MOTION DATE 02/28/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that this motion is granted.

Defendant insurance company moves for summary judgment dismissing the complaint against it brought by plaintiff condominium. Plaintiff seeks recovery herein upon its insurance claim for water damage to its building caused by an overflowing toilet. Defendant argues on this motion that the applicable policy excludes coverage for this particular loss. Specifically, the policy in place at the time of the occurrence makes plain that defendant “will not pay for loss or damage caused directly or indirectly by ... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.” Plaintiff has acknowledged through documentation by its retained public adjuster, through its verified interrogatory responses and in sworn deposition testimony by its building manager that the source of the water damage for which it seeks recovery was a toilet that malfunctioned and overflowed while the unit resident was out of town. Under such circumstances, the policy exclusion applies – as the admitted cause of the occurrence, i.e., the malfunctioning toilet, constitutes at least “related equipment” within the meaning of said policy exclusion (*see Newlo*


Realty Co. v U.S.F. & G. Corp., 213 AD2d 295 [1st Dept. 1995]; *see also Cardio Diagnostic Imaging, Inc. v Farmers Ins. Exchange*, 212 Cal App. 4th 69, 150 Cal Rptr. 798 [Cal. Ct. App. 2012]). Thus, there is here no need for any trial.

Accordingly, it is

ORDERED that defendant's motion for summary judgment dismissing the complaint is granted, and, therefore, the Clerk is hereby respectfully directed to enter judgment dismissing the complaint in its entirety.

1/7/2020

DATE


ROBERT R. REED, 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