

Bedivere Ins. Co. v Chanel, Inc.
2020 NY Slip Op 30491(U)
February 19, 2020
Supreme Court, New York County
Docket Number: 651145/2019
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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BEDIVERE INSURANCE COMPANY, LAMORAK
INSURANCE COMPANY, LIBERTY MUTUAL INSURANCE
COMPANY,

Plaintiff,

- v -

CHANEL, INC., THE AMERICAN INSURANCE COMPANY,
FEDERAL INSURANCE COMPANY, NATIONAL SURETY
CORPORATION

Defendant.

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INDEX NO. 651145/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 50, 51

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and for the reasons set forth on the record (2/19/2020), Chanel, Inc. (Chanel)'s motion to dismiss the complaint is denied.

The Relevant Facts and Circumstances

Bedivere Insurance Company, Lamorak Insurance Company, and Liberty Mutual Insurance Company (the Plaintiffs) are insurers or successors to those insurers that issued commercial generally liability policies to Chanel. The Plaintiffs, together with The American Insurance Company, Federal Insurance Company, and National Surety Corporation (the Insurer Defendants; the Insurer Defendants and the Plaintiffs, collectively the Insurers) are providing a defense to Chanel, under a reservation of rights, regarding claims for bodily injury allegedly caused by Chanel talc products that contained asbestos fibers (the Asbestos Claims).

This action concerns the construction and application of certain insurance policies issued by the Insurers regarding the Asbestos Claims. The asbestos claimants allege exposure to the Chanel products beginning in the 1950s and continuing to the 2000s or 2010s, when those claimants were allegedly diagnosed with asbestos-related disease (NYSCEF Doc. No. 2, ¶ 19).

To date, none of the Asbestos Claims has resulted in a finding of liability or an award of damages against Chanel (*id.*, ¶ 16). However, the Insurers have entered into interim settlement agreements with Chanel to fund a number of settlements for the Asbestos Claims (NYSCEF Doc. No. 29, ¶ 12). Other Asbestos Claims may be resolved by settlement and further payments funded by the Insurers, or continue in litigation (*id.*).

On February 25, 2019, the Plaintiffs commenced this action seeking a judicial declaration regarding whether the allocation method set forth in *Keyspan Gas E. Corp. v Munich Reins. Am., Inc.*, 31 NY3d 51 [2018] governs the payment of judgments or settlements, as between Chanel, the Plaintiffs, and the Insurer Defendants, in the Asbestos Claims.

On April 17, 2019, Chanel filed this motion to dismiss the complaint. The remaining Insurer Defendants have filed their respective answer and counterclaims.

Discussion

On a motion to dismiss, the pleadings are to be afforded a liberal construction and the facts as alleged in the complaint are accepted as true (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). CPLR

3211 § (a) (7) requires the court to assess whether the proponent of the pleading has a cause of action and not whether he has stated one (*id.*).

When a party brings a motion to dismiss a declaratory judgment, the only issue to determine is whether a proper case has been presented to invoke the court's jurisdiction to make a declaratory judgment, and not whether the movant is entitled to a declaration in its favor (*Hallock v State*, 32 NY2d 599, 603 [1973]).

A court has the discretion to render a declaratory judgment pursuant to CPLR § 3001:

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds. A party who has brought a claim for personal injury or wrongful death against another party may maintain a declaratory judgment action directly against the insurer of such other party, as provided in paragraph six of subsection (a) of section three thousand four hundred twenty of the insurance law.

The New York Court of Appeals has explained that

[t]he general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations. Where there is no necessity for resorting to the declaratory judgment it should not be employed

(*Walsh v Andorn*, 33 NY2d 503, 507-508 [1974], citing *James v. Alderton Dock Yards*, 256 NY 298, 305 [1931]).

A justiciable controversy requires a “real dispute between adverse parties, involving substantial legal interests, for which a declaration of rights will have some practical effect” (*Downe v Rothman*, 215 AD2d 716, 717 [2d Dept 1995]).

Chanel argues that the Complaint should be dismissed because the declaratory relief sought by the Plaintiffs would result in piecemeal litigation. By way of example, Chanel asserts that this Court's ruling would not be sufficient for the parties to calculate amounts due under the policies because there remain unresolved issues, including how many years Chanel was uninsured, the limits under the insurance policies between 1962-1969, and the extent of the Plaintiffs' obligation to fund defense costs. In opposition, the Plaintiffs argue that a declaratory judgment is proper because a ruling on allocation will have a practical impact on the parties' rights and conduct concerning settlements or future judgments for any outstanding Asbestos Claims. The Court agrees.

There is a fundamental disagreement over how loss should be apportioned among the parties to the insurance policies in issue (*see Lang v Hanover Ins. Co.*, 3 NY3d 350, 353 [2004] [explaining that parties to an insurance contract may bring a declaratory judgment regarding the extent of coverage or other issues arising from the underlying insurance contract]). Further, the matter of allocation involves substantial legal interests, which would have the practical effect of clarifying the parties' respective obligations under the relevant insurance policies. In other words, an allocation under the insurance policies would serve a useful function and immediately affect the portion of payment that the Insurers and Chanel will bear for interim settlements and any future settlements to be made (*contra NY Pub. Interest Research Group, Inc. v Carey*, 42 NY2d 527, 531-532 [1977] [dismissing a declaratory judgment to determine whether a statute, if adopted, would be unconstitutional because declaratory relief would be premature and advisory where the adoption of legislation was beyond the control of the parties and might never occur]).

Thus, the Plaintiffs' allegations present a justiciable controversy for resolution such that the Plaintiffs have sufficiently stated a claim for a declaratory judgment pursuant to CPLR § 3001.

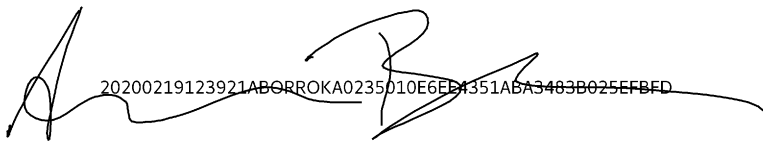
Although Chanel asserts that certain factual issues impede the declaratory relief sought, such as the years in which Chanel was insured, questions of fact do not form a basis for dismissal of an action for a declaratory judgment (*see Empire Mut. Ins. Co. v McLaughlin*, 35 AD2d 1074, 1074 [4th Dept 1970], citing *Weinstein-Korn-Miller*, 5 NY Civ. Prac., ¶ 3001.16). In addition, Chanel opposes declaratory relief because this action does not resolve the extent of the Plaintiffs' duty to defend the Asbestos Claims. However, CPLR § 3001 requires that a declaratory judgment resolve rights between parties to a justiciable controversy, rather than the resolution of every controversy between the parties.

Finally, to the extent that Chanel argues that a declaratory judgment would result in piecemeal litigation, the issue may very well be moot. Following the filing of this motion, the Insurer Defendants filed their answer and counterclaims which has expanded the litigation considerably to address the lionshare of the concerns raised by Chanel. The Insurer Defendants have asserted their respective counterclaims and cross-claims for: (i) reimbursement, contribution, indemnification, apportionment, subrogation, and/or equitable subrogation against parties to this action if the Insurer Defendants are found to have paid or to be liable to pay defense and/or indemnity expenses incurred by Chanel for the Asbestos Claims in amounts that exceed the amounts payable under their insurance policies, or that is greater than the Insurer Defendants' fair and equitable share of such costs, (ii) equitable contribution from Chanel in an amount equal to costs allocable to Chanel if the Insurer Defendants are found liable to pay defense and/or

indemnity expenses incurred by Chanel for the Asbestos Claims as a result of improper or premature exhaustion of policies issued by other insurers or as a result of uninsured, insolvent or "lost policy" periods, and (iii) a declaration of each party's respective amount or allocable share of defense and indemnity costs incurred in the Asbestos Claims (NYSCEF Doc. No. 22, at 13-14; NYSCEF Doc. No. 25, at 15-16).

Accordingly, it is

ORDERED that Chanel's motion to dismiss the complaint is denied.


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2/19/2020
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: