

Benedetto v Hyatt Corp.
2020 NY Slip Op 30794(U)
March 13, 2020
Supreme Court, New York County
Docket Number: 160322/2014
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

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DOMINICK BENEDETTO and MARY
BENEDETTO,

Plaintiffs,

INDEX NO. 160322/2014

MOTION DATE _____

MOTION SEQ. NO. 003

- v -

HYATT CORPORATION, HYATT EQUITIES,
L.L.C., GRAND HYATT NEW YORK, HYATT
CORPORATION d/b/a GRAND HYATT NEW
YORK, and HYATT EQUITIES, L.L.C. d/b/a GRAND
HYATT NEW YORK,

Defendants.

**DECISION + ORDER ON
MOTION**

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HYATT CORPORATION s/h/a HYATT
CORPORATION d/b/a GRAND HYATT NEW YORK
and HYATT EQUITIES, L.L.C. s/h/a HYATT
EQUITIES, L.L.C. d/b/a GRAND HYATT NEW YORK,

Third-Party Plaintiffs,

-against-

Third-Party
Index No. 595457/2015

SECURITAS SECURITY SERVICES USA INC.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 143-151, 153-168 were read on this motion to _____ renew _____.

By decision and order dated August 12, 2019, defendants/third-party plaintiffs' (Hyatt) motion for summary judgment was granted on its cause of action against Securitas for breach of an insurance procurement obligation given its demonstration that Securitas had procured an insurance policy with coverage of \$2 million per occurrence instead of fulfilling its contractual

obligation of coverage of \$3 million per occurrence. Securitas's motion for summary judgment was denied in its entirety. (NYSCEF 145).

Now, by notice of motion, Securitas moves pursuant to CPLR 2221 for an order granting leave to renew the order awarding Hyatt summary judgment on its cause of action for failure to procure insurance and awarding Securitas summary judgment on the same cause of action. Hyatt and plaintiff oppose.

I. CONTENTIONS

A. Securitas (NYSCEF 143-147)

By affirmation dated September 10, 2019, Securitas's counsel states that after receiving notice of entry of the August 12, 2019 order, his office was advised by Securitas that it had multiple insurance policies in effect during the relevant period, and it provided counsel with a policy that was in effect from January 1, 2012 to January 1, 2013 with limits of \$8,000,000 per occurrence. A request for proof of the coverage from Securitas's local office was never communicated from the local office to Securitas's main legal department. In addition, counsel has since learned that Securitas's insurance broker has multiple branch offices, each of which maintains different client documentation. Thus, the existence of the insurance policy was unknown to counsel until it was provided by Securitas in late August 2019. (NYSCEF 144).

Attached to counsel's affirmation is a declarations page for a commercial umbrella liability insurance policy reflecting that nonparty Securitas Holdings, Inc. has coverage of \$8 million per occurrence and a self-insured retention of \$10,000 per occurrence. The policy was in effect from January 1, 2012 to January 1, 2013. (NYSCEF 146).

Securitas argues that while motions to renew are generally granted upon the submission of newly discovered facts not available on the prior motion, the court retains discretion to grant

such a motion even if the evidence is not newly discovered in the interest of justice. It contends that Hyatt will not be prejudiced by the granting of the motion because, as argued on the prior motion, Hyatt received proof of Securitas's insurance on an annual basis and never complained or alleged insufficient coverage. As the policy is dispositive of Hyatt's cause of action and it did not withhold the policy deliberately, Securitas argues that leave to renew should be granted. (NYSCEF 147).

B. Hyatt (NYSCEF 153-156)

Hyatt argues that leave should not be granted because Securitas does not submit all the papers considered on the prior motion and may not do so in reply. It contends that Securitas lacks a reasonable justification for failing to provide the insurance policy since August 2015, when plaintiff demanded production of its primary and excess insurance policies. (NYSCEF 154). Hyatt observes that Securitas was required to provide the insurance policy in multiple discovery conference orders (NYSCEF 155), and that Securitas never advised the parties of its difficulty in obtaining documents. It also asserts that Securitas's counsel lacks personal knowledge of Securitas's internal failure to produce the policy, and that the failure to locate and submit documents due to voluminous production of documents does not constitute a valid basis for a motion to renew. Moreover, Securitas does not explain why the interests of justice warrant granting leave to renew. (NYSCEF 156).

By affirmation dated December 30, 2019, Hyatt argues that the policy now submitted by Securitas is still insufficient, as the declarations page is unauthenticated and reflects that the named insured is nonparty Securitas Holdings Inc., not third-party defendant Securitas Security Services USA, Inc., the party with whom Hyatt contracted. In addition, Securitas's submission does not show that Hyatt is insured under the policy, as required by the contract, and it reflects

that coverage is subject to a \$10,000 self-insured retention per occurrence, and Securitas provides no evidence that it has satisfied its self-insured retention. Hyatt observes that in its June 5, 2018 discovery response (NYSCEF 113), Securitas stated that it had a self-insured retention of \$500,000 and additional coverage with total liability limits in the amount of \$3,000,000 per occurrence. (NYSCEF 153).

C. Plaintiff (NYSCEF 157)

Plaintiff adopts Hyatt's arguments and opposes Securitas's motion for leave to renew. (NYSCEF 157).

D. Reply (NYSCEF 158-168)

Securitas argues that Hyatt had previously admitted at its deposition that Securitas annually provided Hyatt with proof of insurance, and thus, it should be precluded from now arguing that such proof does not exist or that it is prejudiced. (NYSCEF 159).

By affirmation dated January 7, 2020, Securitas argues that as plaintiff asserts no claims against Securitas, he lacks standing to oppose Securitas's motion, and it observes that in opposition to the prior motion, plaintiff took no position as to the cause of action for failure to procure insurance. Thus, it maintains that plaintiff's opposition should be disregarded. As the court may take judicial notice of previously e-filed documents, and Hyatt does not dispute the existence or reliability of the previously e-filed documents, Securitas maintains that its motion is not defective. Nevertheless, Securitas attaches copies of the papers submitted on the prior motion (NYSCEF 160-166), along with the commercial general liability policy (number US00005451LI12A) that was attached to Hyatt's motion for summary judgment (NYSCEF 167), and the full commercial umbrella liability policy (number US00005452LI12A), which corresponds to the declarations page attached to counsel's September 10, 2019 affirmation

(NYSCEF 168). Securitas observes that the commercial general liability policy provides \$2 million in coverage, and the commercial umbrella liability policy provides \$8 million in coverage, and thus, Securitas has insurance in excess of the \$3 million required under the parties' contract. Securitas maintains that the insurance policy covers Hyatt, referring to the commercial general liability policy which reflects that entities "required by written contract" are covered. Securitas asserts that it is insured under the policy, referring to the commercial general liability policy which reflects that the following entities are named insureds:

Securitas Services, Inc, USA, Securitas Security Services USA, Bi Equities Corporation, Burns International Services Company, Pinkerton Services Corporation USA, Centaur Insurance Company USA, Protectors Insurance Company of Vermont USA, Renaissance Center Management Inc., USA, Safeguard Service USA, Securitas Funding LLC USA, Securitas Security Services of Puerto Rico, Inc. Security Management and Investigations of USA, Security Professionals, Inc. USA, Pinkerton Consulting and Investigations USA, Pinkerton LLC USA, Burns International Liability Management Company, USA, Burns International Services Company, LLC, USA, Burns International Security Services Company LLC USA, Ithaca Land Management, Pinkerton Government Services Inc., USA, Pinkerton Government Services of Puerto Rico, Inc. USA, Pinkerton Foundation 2000, Inc. USA.

According to Securitas, one of the endorsements to the commercial umbrella liability policy, "[a]ttached to and forming part of Policy No.: US0000542LI12A," provides that "insured" is defined as the "Named Insured" and "[a]ny person or organization, other than the 'Named Insured' included as an additional insured under 'Schedule Underlying Insurance'" [...]. Accordingly, Securitas maintains that Securitas Security Services and Hyatt are insured under the policy.

Securitas argues that Hyatt cites no authority requiring it to satisfy its self-insured retention, and even if it were required to, it would still have over \$8 million in coverage after accounting for the self-insured retentions alleged by Hyatt. (NYSCEF 158).

II. ANALYSIS


A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” (CPLR 2221[d][2]). A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination, and shall contain reasonable justification for the failure to present such facts on the prior motion.” (CPLR 2221[e][2], [3]). The determination as to whether the failure to present facts on a prior motion was sufficiently justified is discretionary. (*Mejia v Nanni*, 307 AD2d 870 [1st Dept 2003]).

As early as June 24, 2015, when Hyatt commenced the third-party action against Securitas, Securitas was on notice that Hyatt was alleging that it failed to procure insurance in accordance with their contract. Securitas has been served with discovery demands for the relevant insurance documents, there have been multiple conferences spanning multiple years during which Securitas was ordered to provide such documents, and Securitas claims to have issued copies of the insurance policies to Hyatt annually. Inexplicably, however, less than 30 days after Hyatt’s motion for summary judgment was decided, Securitas remembered that it had an additional excess insurance policy and offers no indication as to when counsel sought proof of insurance from Securitas. Accordingly, Securitas’s claimed ignorance of the insurance policy is not reasonable.

In any event, even if Securitas’s “new” evidence is considered, the commercial umbrella liability policy declarations page is insufficient, absent any indication on it that Securitas or Hyatt is insured. To the extent Securitas relies on the commercial general liability policy to fill in

gaps, that policy reflects a different policy number and lacks any indication that the commercial umbrella liability policy is connected to it. To the extent that Securitas attempts to remedy this deficiency by offering the entire policy in reply, it is not considered, especially as its motion to renew is based upon documents that were in Securitas’s possession at the time of the underlying motion. (*See 70th St. Apartments Corp. v Phoenix Const. Inc.*, 139 AD3d 619, 619 [1st Dept 2016] [not considering evidence submitted for the first time in reply on motion to renew]; *Rhodes v City of New York*, 88 AD3d 614, 615 [1st Dept 2011] [same]).

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3/13/2020
DATE

BARBARA JAFFE, J.S.C.

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