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| <b>Nationstar Mtge. LLC v Interboro Ins. Co.</b>   |
| 2020 NY Slip Op 33750(U)   |
| November 10, 2020  |
| Supreme Court, New York County   |
| Docket Number: 655841/2018   |
| Judge: Arlene P. Bluth   |
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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. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

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**INDEX NO. 655841/2018**

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER,

**MOTION DATE N/A, N/A**

Plaintiff,

**MOTION SEQ. NO. 003 004**

- v -

INTERBORO INSURANCE COMPANY, MITCHELL WINN

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 101, 102

were read on this motion to/for DISMISS.

The motion (MS003) by plaintiff for summary judgment is denied. The motion (MS004) by defendant Interboro Insurance Company (“Interboro”) to dismiss the complaint is granted.

**Background**

This insurance dispute arises out of a mortgage executed to non-party Abraham Rodriguez in 2009 (plaintiff is the servicer for the mortgage). The mortgage secured real property owned by Rodriguez and his wife Aracely in Lindenhurst, New York. Rodriguez entered into a series of modifications and then purportedly defaulted under the terms of the mortgage in November 2016. On October 17, 2016, the property suffered severe fire damage and plaintiff made a claim under an insurance policy Interboro had previously issued to the Rodriguezs.

Plaintiff claims that Interboro and Rodriguez agreed that the insurance proceeds should be paid to plaintiff but it never received the check for \$159,000. Plaintiff acknowledges that it did receive a check for just over \$40,000 for a separate issue but did not receive the \$159,000 check (which was addressed to Rodriguez's attorney, defendant Winn). The case against defendant Winn was previously dismissed as the Court emphasized that plaintiff had no viable breach of contract claim against Winn (NYSCEF Doc. Nos. 29, 50).

Plaintiff moves for summary judgment for the \$159,000 and claims that the payment details for the check show it was to be made to plaintiff as an additional payee. Plaintiff insists that it is an intended beneficiary of the insurance policy and should have received the \$159,000 check.

In opposition, Interboro claims that plaintiff's motion should be denied because plaintiff already received \$177,325.91 from the foreclosure sale of the property and giving plaintiff the proceeds would result in a windfall. Interboro points to cases dealing with restrictions against recovering double damages and claims that plaintiff should have returned the approximately \$40,000 it received in connection with the fire because it was not offset against the foreclosure recovery. It argues that Aracely Rodriguez is in possession of the settlement funds and that this case cannot go forward without that defendant.

Interboro also brings its own motion to dismiss because plaintiff did not name the Rodriguezs, who are necessary parties.

**Discussion**

As an initial matter, the Court observes that plaintiff did not file a reply to its motion (MS003) nor did it file opposition to defendant Interboro’s motion to dismiss (MS004). Instead, plaintiff filed a letter in which it asked the Court to consider its motion (presumably its moving papers) as opposition to Interboro’s motion (NYSCEF Doc. No. 101).

The Court declines to do that. While this Court has no issue considering opposition papers in connection with multiple motions, it does not see how it can consider moving papers as an opposition. Even if the Court were to consider plaintiff’s moving papers as opposition, plaintiff’s papers do not address Interboro’s claims that plaintiff failed to name necessary parties. Therefore, this Court has no choice but to dismiss this case. The fact is that Interboro claims that the proceeds were paid to Aracely Rodriguez and that both she and her husband are necessary parties. Moreover, Interboro asserts, again without opposition from plaintiff, that plaintiff cannot pursue what essentially amounts to double recovery (the foreclosure sale proceeds plus the insurance check).

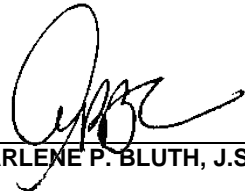
This Court will not raise objections on plaintiff’s behalf or guess at how plaintiff’s papers might raise a valid argument in opposition. That is the point of opposition papers—to specifically address the points raised by the opposing party. The Court cannot evaluate arguments that were never made.

Accordingly, it is hereby

ORDERED that the motion for summary judgment (MS003) by plaintiff is denied; and it is further

ORDERED that the motion to dismiss (MS004) by defendant Interboro Insurance Company is granted and the Clerk is directed to enter judgment accordingly along with costs and disbursement after presentation of proper papers therefor.

11/10/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

|                       |                                     |                            |                                 |   |
|-----------------------|-------------------------------------|----------------------------|---------------------------------|---|
| CHECK ONE:            | <input checked="" type="checkbox"/> | CASE DISPOSED              | <input type="checkbox"/>        | NON-FINAL DISPOSITION                     |
|                       | <input type="checkbox"/>            | GRANTED                    | <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART  |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               |                                 | <input checked="" type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/>        | FIDUCIARY APPOINTMENT                     |
|                       |                                     |                            | <input type="checkbox"/>        | REFERENCE                                 |