

**Zurich Am. Ins. Co. v Standard Intl. Mgt., LLC**

2021 NY Slip Op 30149(U)

January 15, 2021

Supreme Court, New York County

Docket Number: 652959/2020

Judge: Arlene P. Bluth

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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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ZURICH AMERICAN INSURANCE COMPANY,

Plaintiff,

- v -

STANDARD INTERNATIONAL MANAGEMENT, LLC, STANDARD INTERNATIONAL, LLC, 112 ACADEMY LLC, ABG STANDARD OPERATOR, LLC, AB GREEN GANSEVOORT, LLC, AB OWNER, LLC, ANDRE BALAZS, BUNKHOUSE CALIFORNIA EMPLOYER, LLC, BUNKHOUSE GROUP, LLC, BUNKHOUSE MANAGEMENT LLC, COOPER AB LLC, DOWNTOWN JO'S LP, EL COSMICO, LLC, HOTEL HAVANA, LLC, HOTEL SAN JOSE, LLC, JO'S CAMPUS COFFEE, LLC, SEAM HOLDINGS, LLC, SEAM STANDARD, LLC, SEAM PROJECTS, LLC, SHL PROPERTY OWNER, LLC, STANDARD DOWNTOWN EMPLOYER, LLC, STANDARD DOWNTOWN LESSEE, LLC, STANDARD EAST VILLAGE EMPLOYER, LLC, STANDARD HIGH LINE EMPLOYER, LLC, STANDARD HIGH LINE MANAGEMENT, LLC, STANDARD HOLLYWOOD EMPLOYER, LLC, STANDARD HOLLYWOOD LESSEE, LLC, STANDARD INTERNATIONAL BH INVESTOR, LLC, STANDARD MANAGER, LLC, STANDARD MIAMI EMPLOYER, LLC, STANDARD MIAMI LESSEE, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 23

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 22, 24

were read on this motion to/for DISMISS

Motion sequence numbers 001 and 002 are consolidated for disposition. The motion (MS001) by certain defendants to dismiss all claims except claims 1, 4, 7 and 10 against defendants Standard International Management, LLC and Standard International, LLC is granted

in part and denied in part. The motion (MS002) by defendants AB Owner, LLC and Andrew Balazs to dismiss the complaint against them is granted.

### **Background**

This insurance dispute concerns various insurance policies issued by plaintiff. Plaintiff contends that it issued policies of workers' compensation and employers' liability insurance to certain defendants from 2015-2018. It seeks to recover what it claims are outstanding premiums from the covered defendants based on these policies. Plaintiff also claims it issued policies of generally liability insurance to various defendants in 2017 and 2018 and seeks earned premiums for both years.

Defendants move to dismiss the case against the vast majority of the defendants named in this case. They claim that plaintiff has sued the *additional insureds* named in these policies as defendants in this case as a way to gain leverage, but the case is really between plaintiff and the two "Standard" defendants. Defendants insist there is no basis for joint and several liability on the numerous other defendants named in this case. They point out that all four workers' compensation policies are contracts between plaintiff and Standard International Management ("SIM") and both general liability policies are between plaintiff and Standard International, LLC ("Standard"). Defendants argue that there is no mention of joint and several liability anywhere in the policies and there is no claim against the other defendants. In motion sequence 002, defendants AB Owner, LLC and Andrew Balazs join in the relief requested by the movants in MS001.

In opposition, plaintiff insists its complaint is well pled and that defendants' motions should be denied. Plaintiff explains that the policies were subject to audit based on actual

exposure during the effective dates of coverage and that the policies were adjusted accordingly based on the exposure of each defendant.

Plaintiff maintains that the intention of the contracts (the policies) was for defendants to be insureds and that all the defendants are responsible for the audit premiums. It insists that discovery is required to explore the claims alleged by plaintiff.

In reply, defendants argue that plaintiff has not stated a basis upon which joint and several liability could apply to the defendants that were not parties to the contract and only named as additional insureds.

### **Discussion**

“On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff” (*Alden Global Value Recovery Master Fund L.P. v Key Bank Natl. Assoc.*, 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

“Turning to defendants' CPLR 3211(a)(1) motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]).

The Court grants the motions. There is no basis to find that plaintiff has a cause of action to recover premiums (even audit premiums) against parties who were never parties to the insurance contract. Plaintiff's claim that these additional insured are jointly and severally liable

makes no sense. Under that theory, every party named as an additional insured is responsible for all unpaid insurance premiums. What would be purpose of being named as an additional insured if that party is responsible for the premiums? One might assume that the party would simply get their own insurance—the very purpose of being named as additional insured is to put the onus on another party to take care of getting insurance.

And, of course, nothing in the language of the various policies at issue here suggests that the additional insureds would be liable for unpaid premiums. In fact, the various policies note that they are contracts of insurance between plaintiff and either SIM or Standard. The Court declines to expand the reach of third-party beneficiary doctrine to the extent demanded (without support) by plaintiff.

### **Unjust Enrichment Claim**

“The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in ‘equity and good conscience’ should be paid to the plaintiff. In a broad sense, this may be true in many cases, but unjust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled. An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim” (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790, 944 NYS2d 732 [2012]).

The Court dismisses the unjust enrichment claim as duplicative of the breach of contract claim. There is no dispute that there was a contract of insurance. While plaintiff can plead in the

alternative, it cannot use this cause of action as a “catch-all” cause of action. Here, it simply duplicates the contract claims and that is impermissible.

**Account Stated against SIM and Standard**

The Court denies the branch of the motion to dismiss the account stated claims against SIM and Standard (they are dismissed as against the additional insured defendants). As stated above, plaintiff can plead in the alternative. And plaintiff alleges it sent bills to SIM and Standard and that the premiums were not paid. That states causes of action for account stated.

**Summary**

The Court finds that the additional insureds have no place in this case. They did not sign the insurance policies nor were they required to pay any premiums. The Court declines to find that non-parties to an insurance policy could face any liability for unpaid premiums by the original insured. Plaintiff cited no binding case law for its claim that it could recover against these defendants.

Accordingly, it is hereby

ORDERED that the motion MS001 by certain defendants to dismiss is granted to the extent that the claims against all defendants except for defendants Standard International Management, LLC and Standard International LLC are severed and dismissed, the unjust enrichment claims (causes of action numbers 2, 5, 8, 11, 14 and 17) are severed and dismissed as against all defendants and the motion is denied as to the remaining claims; and it is further

ORDERED that the motion (MS002) by defendants AB Owner, LLC and Andrew Balazs to dismiss the claims against them is granted and all claims against these defendants are severed and dismissed; and it is further

ORDERED that the remaining defendants are directed to answer pursuant to the CPLR.

Remote Conference: April 29, 2021.

1/15/2021

DATE

ARLENE P. BLUTH, 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