

Salem Truck Leasing, Inc. v GC Trans Corp.
2021 NY Slip Op 30671(U)
March 8, 2021
Supreme Court, New York County
Docket Number: 155580/2020
Judge: David Benjamin Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

-----X

INDEX NO. 155580/2020

SALEM TRUCK LEASING, INC.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

GC TRANS CORP. and STATE FARM FIRE AND
CASUALTY COMPANY,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS.

In this declaratory judgment action commenced by plaintiff Salem Truck Leasing, Inc. (“Salem”) against defendants GC Trans Corp. (“GCT”) and State Farm Fire and Casualty Company (“State Farm”), GCT moves, pursuant to CPLR 3211(a)(5), to dismiss the complaint against it. Salem opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, State Farm issued a business owners insurance policy to GCT bearing policy number 92-BO-E299-9 with effective dates of April 8, 2014 – April 8, 2015 (“the policy”). Doc. 7.

On or before May 22, 2014, Salem entered into an agreement (“the lease agreement”) to lease GCT certain trucks to be used by GCT’s employees. Doc. 1 at par. 8. The lease agreement required that GCT procure insurance coverage naming Salem as an additional insured and requiring GCT’s insurer to defend any lawsuits against Salem. Doc. 1 at par. 9. On May 22,

2014, Binsonn Guillaume was injured in an accident during the scope of his employment for GCT. Doc. 1 at pars. 11-12. On or about January 6, 2015, Guillaume commenced a personal injury action against Preuss, Inc. (“Preuss”) and Salem in the Supreme Court, Kings County under Ind. No. 16475/14 (“the Kings County action”). Doc. 1 at par. 10; Doc. 2. Salem in turn impleaded GCT in the Kings County action, alleging common law and contractual indemnification as well as breach of contract. Doc. 1 at par. 10; Doc. 4.

By correspondence dated July 16, 2019, State Farm disclaimed coverage to GCT under the policy in connection with the Kings County action. Doc. 7.

On July 22, 2020, the parties to the Kings County action filed a stipulation of discontinuance providing, inter alia, as follows:

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all parties to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, all causes of action, claims, counterclaims, and cross-claims by and against each, any, and all of the parties are hereby discontinued with prejudice, and without costs, disbursements, or attorney[s'] fees...

The stipulation of discontinuance further provided that:

this [stipulation] shall not affect the rights of [Salem] and its insurers to pursue defense and indemnity under [the policy] issued by [State Farm] . . . to [GCT] . . .

Doc. 6.

The same day, Salem commenced the captioned declaratory judgment action against GCT and State Farm, alleging that it was entitled to a declaration that said defendants were obligated to defend, indemnify, and provide insurance coverage for it in the Kings County action. Doc. 1. State Farm joined issue in this action by its answer filed November 4, 2020. Doc. 15.

GCT now moves, pursuant to CPLR 3211(a)(5), to dismiss the complaint based on the stipulation of discontinuance in the Kings County action. Doc. 9. In support of the motion, GCT argues that the claims against it in the captioned action are barred by the release set forth in the stipulation of discontinuance executed in the Kings County action. Doc. 10.

In opposition to the motion, Salem argues that GCT's motion must be denied since the stipulation of discontinuance clearly preserved its right to pursue coverage under the policy.

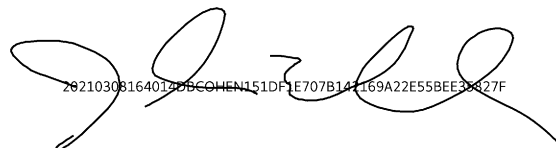
LEGAL CONCLUSIONS

CPLR 3211(a)(5) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the cause of action may not be maintained because of . . . [a] release.” “The meaning and scope of a release must be determined within the context of the controversy being settled” (*Matter of Schaefer*, 18 NY2d 314, 317 [1966]). A “release may not be read to cover matters which the parties did not desire or intend to dispose of” (*Corzatt v. Taylor*, 126 A.D.3d 1505 [4th Dept. 2015] [citation omitted]; *see Chiappone v North Shore Univ. Hosp.*, 164 AD3d 463, 465 [2d Dept 2018]). Here, it is evident from the portion of the release preserving Salem's right to pursue defense and indemnity under the policy issued to GCT that the parties did not intend to dispose of this claim (*see Kaminsky v Gamache*, 298 AD2d 361, 362 [2d Dept 2002]). This conclusion is buttressed by GCT's conspicuous failure to quote the provision of the release preserving Salem's rights in its motion papers.

Accordingly, it is hereby:

ORDERED that the motion to dismiss by defendant GC Trans Corp. is denied; and it is further

ORDERED that the parties are to appear for a preliminary conference on April 26, 2021 at 11:00 a.m. unless they first complete a bar coded preliminary conference form (to be provided by the Part 58 Clerk) and email the same to the Part 58 Clerk at SFC-Part58-Clerk@nycourts.gov at least two business days prior to that date.



2021030816401908COHEN151DF1E707B141169A22E55BEE30427F

DAVID BENJAMIN COHEN, J.S.C.

3/8/2021
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: