

Integon Natl. Ins. Co. v Man Chin
2021 NY Slip Op 31015(U)
April 2, 2021
Supreme Court, New York County
Docket Number: 158082/2019
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

INTEGON NATIONAL INSURANCE COMPANY,

Plaintiff,

- v -

MAN CHIN, CRYSTAL CHIN, SONIA GARCIA

Defendant.

-----X

INDEX NO. 158082/2019

MOTION DATE 11/09/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

Upon the foregoing documents and for the reasons stated hereinbelow, (1) the instant request by plaintiff, Integon National Insurance Company, pursuant to CPLR 3212, for summary judgment in favor of plaintiff and against defendants, Sonia Garcia, Man Yee Chin and Crystal Chin, is granted solely on plaintiff's request for declaratory relief and not on defendant Sonia Garcia's counter-claims; and (2) the instant request by plaintiff for a declaration that plaintiff is not obligated to defend and/or indemnify defendants Man Yee Chin and Crystal Chin against the claims asserted against them in the underlying action captioned Sonia Garcia v The City of New York et al., Index No. 508423/2019, in New York State Supreme Court, Kings County is granted. Plaintiff's request for attorney's fees, made in the instant complaint, is denied as not requested in the instant Notice of Motion (NYSCEF Doc. 10) and as there appears to be no support for said relief.

Background

Briefly put and as plaintiff alleges, defendant Sonia Garcia claims that on February 18, 2019 ("the date of loss") she suffered personal injuries arising from a slip and fall on a public sidewalk at premises ("the Premises") in Brooklyn, New York that defendants Man Yee Chin and Crystal Chin, among others, owned. Plaintiff had issued a "Dwelling Fire Policy" ("the Policy") to various individuals that covered a period that included the date of loss. Defendant Sonia Garcia then commenced a personal injury action captioned Sonia Garcia v The City of New York et al., Index No. 508423/2019, in New York State Supreme Court, Kings County ("the Underlying Action") against defendants Man Yee Chin, Crystal Chin, the City of New York, and others (NYSCEF Doc. 1.)

Plaintiff asserts that the Policy covers neither “bodily injury claims arising out of a premises owned by an insured or rented to others by an insured that is not an ‘insured location’ nor “bodily injuries claims arising out of the rental or holding for rental of any premises by an insured that is not an ‘insured location.’” Plaintiff further asserts, essentially, that (1) defendants Man Yee Chin and Crystal Chin are not “named insureds” on the Policy; (2) said defendants are not members of the household of the named insureds; (3) said defendants do not live at the Premises; and (4) on the date of loss, the Premises did not qualify as an “insured location.” (NYSCEF Doc. 1.)

On August 19, 2019, plaintiff commenced the instant action against defendants, seeking a judgment (1) declaring that plaintiff has no duty to defend or indemnify defendants Man Yee Chin and Crystal Chin against claims made against them in the Underlying Action; and (2) awarding costs and attorney’s fees to plaintiff (NYSCEF Doc. 1, at 5-6).

On September 28, 2019, defendant Sonia Garcia answered the instant complaint with various admissions, denials, seventeen Affirmative Defenses, various counter-claims against plaintiff (alleging, inter alia, breach of contract, violation of Insurance Law § 2601, violation of GBL § 349), and various cross-claims against defendants Man Yee Chin and Crystal Chin (alleging, inter alia, negligence) (NYSCEF Doc. 5). On March 20, 2020 plaintiff replied to defendant Sonia Garcia’s counter-claims against plaintiff (NYSCEF Doc. 6).

Plaintiff now moves (1), pursuant to CPLR 3212, for summary judgment in favor of plaintiff and against defendant Sonia Garcia, declaring that plaintiff is not obligated to defend or indemnify defendants Man Yee Chin and Crystal Chin for the claims asserted against them in the Underlying Action; and (2), pursuant to CPLR 3215, for a default judgment in favor of plaintiff and against defendants Man Yee Chin and Crystal Chin, likewise declaring that plaintiff is not obligated to defend them against the claims asserted against them in the Underlying Action (NYSCEF Doc. 10).

By affidavits dated October 6, 2020 and e-filed on October 8, 2020, defendants Man Yee Chin and Crystal Chin assert that they did not receive service of process of the subject summons and complaint and that the address at which plaintiff attempted to serve them is not a location at which they live or at which any individual is authorized to accept service of process on their behalf. Said defendants thus assert that they have not defaulted. (NYSCEF Doc. 33.)

By correspondence to the Court dated October 8, 2020, and pursuant to the immediately aforementioned affidavits that defendants Man Yee Chin and Crystal Chin submitted on the same day, plaintiff requests that the instant motion be converted to a motion for summary judgment against all defendants, as plaintiff is entitled to a judgment that plaintiff is not obligated to defend or indemnify those two defendants for the claims asserted against them in the Underlying Action (NYSCEF Doc. 35).

Discussion

This Court will accept the October 6, 2020 affidavits of defendants Man Yee Chin and Crystal as timely and, thus, will grant plaintiff’s request to convert its original CPLR 3215 request for a

default judgment as against defendants Man Yee Chin and Crystal Chin to a CPLR 3212 request for summary judgment against those defendants.

To prevail on summary judgment, the moving party must tender sufficient evidence to demonstrate the absence of any material issue of fact and entitlement to judgment in its favor as a matter of law. See Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); Ayotte v Gervasio, 81 NY2d, 1062 (1993). Once the movant has met its initial burden, it then shifts to the party opposing the motion to submit evidentiary proof sufficient to create material issues of fact requiring a trial; mere conclusions and unsubstantiated allegations are insufficient. See Zuckerman v City of New York, 49 NY2d 557, 562 (1980); see generally American Sav. Bank v Imperato, 159 AD2d 444, 444 (1st Dept. 1990) (“The presentation of a shadowy semblance of an issue is insufficient to defeat summary judgment”).

Pursuant to CPLR 3212, plaintiff has established that that there are not any material issues of fact in this matter by submitting, inter alia, a copy of the Policy (NYSCEF Doc. 24); the affidavit of Dan Brownsey, a Claims Adjuster for plaintiff (NYSCEF Doc. 22); and the September 9, 2020 affirmation of Natasha Z. Millman, plaintiff’s attorney (NYSCEF Doc. 11). Defendants have failed to meet their burden to submit evidentiary proof sufficient to establish that material issue(s) of fact do in fact exist in this matter.

Plaintiff has also made out a prima facie case that it has no duty to defend defendants Man Yee Chin and Crystal Chin against the claims asserted against them in the Underlying Action. Plaintiff has e-filed a copy of the Policy as NYSCEF Doc. 24. Defendants Man Yee Chin and Crystal Chin (1) are not named insureds on the Policy; and (2) do not satisfy the definition of an “insured” on the Policy. Obviously, persons who are not named insureds on a policy are not entitled to defense or indemnification by the issuer.

To date, all defendants have failed to oppose the instant motion for summary judgment.

Plaintiff’s request for attorney’s fees, made in the instant complaint, is denied as not requested in the instant Notice of Motion (NYSCEF Doc. 10), and there appears to be no support for this relief.

Therefore, this Court will grant summary judgment in favor of plaintiff and against all defendants, declaring that plaintiff has no duty to defend defendants Man Yee Chin and Crystal Chin against the claims asserted against them in the Underlying Action.

Conclusion

Thus, for the reasons stated hereinabove, the instant motion by plaintiff, Integon National Insurance Company, pursuant to CPLR 3212, for summary judgment in favor of plaintiff and against defendants, Sonia Garcia, Man Yee Chin and Crystal Chin, is hereby granted solely on plaintiff’s request for declaratory relief and not on defendant Sonia Garcia’s counter-claims. Accordingly, the Clerk is hereby directed to enter judgment declaring that plaintiff is not obligated to defend and/or indemnify defendants Man Yee Chin and Crystal Chin against the claims asserted against them in the underlying action captioned Sonia Garcia v The City of New

York et al., Index No. 508423/2019, in New York State Supreme Court, Kings County. Plaintiff's request for attorney's fees, made in the instant complaint, is hereby denied as not requested in the instant Notice of Motion (NYSCEF Doc. 10) and as there appears to be no support for said relief.

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4/2/2021
DATE

ARTHUR F. ENGORON, 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