

Napoli Shkolnik, PLLC v Greenwich Ins. Co.

2021 NY Slip Op 31482(U)

April 30, 2021

Supreme Court, New York County

Docket Number: 657246/2019

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

-----X

NAPOLI SHKOLNIK, PLLC,

Plaintiff,

- v -

GREENWICH INSURANCE COMPANY, HUDSON EXCESS
INSURANCE COMPANY, IRONSHORE SPECIALTY
INSURANCE COMPANY

Defendant.

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INDEX NO. 657246/2019

MOTION DATE 04/29/2021

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The motion for summary judgment by defendant Ironshore Specialty Insurance Company (“Ironshore”) is granted.

Background

This declaratory judgment action arises out of a professional liability insurance policy and an underlying action in federal court in Maryland. Plaintiff, a law firm, was named as a defendant in an October 2017 lawsuit in Maryland brought by another law firm (“Keyes”) that alleged that payments were not made in accordance with a fee sharing referral agreement for asbestos clients. Plaintiff claims that on September 12, 2019, it told defendants Greenwich Insurance Company (“Greenwich”) and Hudson Excess Insurance Company (“Hudson”) about the Keyes lawsuit; it claims it had professional liability policies with both of these defendants.

Greenwich declined coverage on the ground that the Keyes litigation concerned a breach of contract (the fee sharing agreement) rather than the commission of professional services covered by its insurance policy. Defendant Hudson disclaimed for similar reasons. Plaintiff claims that its related firm (Napoli Shkolnik & Associates, “NSA”) never received a denial letter. Plaintiff points out that a jury returned a verdict against plaintiff and NSA in the Keyes litigation for over \$1.5 million. Plaintiff commenced this action seeking a declaration that all defendants were obligated to defend and indemnify plaintiff for the Keyes litigation.

Defendant Ironshore provided plaintiff with a separate professional liability insurance policy and Ironshore similarly disclaimed coverage to plaintiff for the Keyes litigation on the ground that coverage sought by plaintiff did not arise from performing legal services (NYSCEF Doc. No. 62). Ironshore now moves for summary judgment dismissing plaintiff’s claims against it and points out that this Court previously dismissed plaintiff’s claims against defendants Greenwich and Hudson on similar grounds. It concludes that the Keyes action did not allege negligence or malpractice against plaintiff or that plaintiff failed to perform legal services. Ironshore maintains that there is only a superficial connection to the law because both litigants are law firms and that the Keyes case is simply a business dispute that does not invoke a professional liability insurance policy.

Ironshore also observes that the insurance policy it issued to plaintiff has a fee dispute exclusion provision, which bars plaintiff’s claims even if the subject policy were somehow implicated by the Keyes lawsuit.

In opposition, plaintiff emphasizes that an insurer has a broad duty to defend its insured. Plaintiff notes that Keyes alleged that plaintiff breached ethical duties and mishandled client cases in the Maryland litigation. Plaintiff also insists that the fee dispute exclusion does not bar

coverage because it ignores the various allegations made by Keyes. It concludes that if Ironshore's interpretation about the fee dispute exclusion is accepted, "professional liability coverage would be illusory" (NYSCEF Doc. No. 87).

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"An insurance agreement is subject to principles of contract interpretation. Therefore, as with the construction of contracts generally, unambiguous provisions of an insurance contract

must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court” (*Burlington Ins. Co. v NYC Tr. Auth.*, 29 NY3d 313, 321, 2017 NY Slip Op 04384 [2017] [internal quotations and citations omitted]).

This Court has already concluded, when considering similar arguments by defendant Greenwich and Hudson, that the Keyes action involved a purely business dispute and did not involve the rendering (or failure to provide) legal services. The professional liability policy at issue here defines “Professional Legal Services” as *inter alia* “legal services and activities performed for others as a lawyer” (NYSCEF Doc. No. 71 at 3). Nothing about the Keyes litigation implies any legal services or activities performed by plaintiff. Rather, it involves two law firms fighting about their share of fees.

Moreover, the First Department affirmed this Court’s dismissal of the claims against Greenwich and Hudson and held that “The Keyes action was premised on actions taken by plaintiff as a business, not in its professional capacity as a law firm. To the extent that the first and second amended complaints alleged that plaintiff committed malpractice or fraud in its handling of clients’ cases, those ‘shotgun’ allegations were insufficient as no cause of action was premised on those facts” (*Napoli Shkolnik, PLLC v Greenwich Ins. Co.*, 2021 NY Slip Op 02499 [1st Dept 2021]).

Nothing in the papers submitted on this motion compels a different conclusion with respect to Ironshore.

Accordingly, it is hereby

ORDERED that the motion by defendant Ironshore Specialty Insurance Company for summary judgment dismissing the claims against it is granted and the Clerk is directed to enter

judgment accordingly along with costs and disbursements upon presentation of proper papers therefor; and it is further

DECLARED that Ironshore has no obligation to defend, indemnify or reimburse plaintiff in connection with the underlying action filed in the United States District Court for the District of Maryland entitled Keyes Law Firm, LLC v Napoli Bern Ripka Shkolnik, LLP, et al., 17 Civ. 2972.

4/30/2021
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE