

<b>Preferred Contrs. Ins. Co. v KOAM 1 Corp.</b>
2021 NY Slip Op 31503(U)
April 29, 2021
Supreme Court, New York County
Docket Number: 153715/2017
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 57

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PREFERRED CONTRACTORS INSURANCE COMPANY,  
RISK RETENTION GROUP,

Plaintiff,

- v -

KOAM 1 CORP., NEIL SAMUEL, SANDRA SAMUEL, 391  
BROADWAY, LLC, MOHAMMAD ASLAM

Defendant.

INDEX NO. 153715/2017

MOTION DATE 10/08/2020

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

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HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

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

Upon the foregoing documents, it is

Plaintiff Preferred Contractors Insurance Company Risk Retention Group, LLC (herein "PCIC") moves for Summary Judgment, pursuant to CPLR §§ 3001 and 3212, against the sole appearing Defendant, 391 Broadway LLC (herein "391 Broadway") to dismiss 391 Broadway's counterclaims and to obtain a declaration that PCIC general liability insurance policy no. PCIC5025-PCA91986-MA-02, issued to Koam 1 Corp. (herein "Koam") for the period August 12, 2013 to August 12, 2014 (the "Policy"), does not provide coverage for claims asserted in the underlying action pending in this Court under Index No: 152687/2014 (herein the "Underlying Action"), including all first and third party claims that were or could be asserted there. Broadway 391's counterclaim is for an order requiring Plaintiff to provide a defense and indemnification in the Underlying Action. The motion is unopposed, despite a so-ordered stipulation extending time to oppose to September 16, 2020.

In the Underlying Action, Neil and Sandra Samuel allege that Neil Samuel (herein "Samuel") was employed by RA Contracting on or about September 4, 2013 while working on a construction project at 391 Broadway, New York, New York when he allegedly fell from a height down a flight of stairs. The owner of the project, 391 Broadway LLC ("391 Broadway"), retained Koam to serve as general contractor for the conversion of an existing building into condominiums. The elevator shaft work was ultimately subcontracted to Samuel's employer, Mohammad Aslam d/b/a RA Contracting. While constructing the elevator shaft, Samuel fell from a height down a flight of stairs. Samuel alleges that Koam negligently operated, managed, maintained, and controlled the premises.

PCIC received its first notice of the Underlying Matter when 391 Broadway advised that Koam was in default in the Underlying Action. PCIC maintains that several policy exclusions preclude coverage for claims arising out of the Incident. Specifically, PCIC points to the Heights Exclusion, the Action Over Exclusion, the Exclusion for Multi-Unit Residential Structures, the exclusion for Buildings and Structures Exceeding Three Stories, and the Employer Liability Exclusion.

Further, Koam failed to ensure that RA Contracting added it as an additional insured on its insurance policy, and thus, Koam failed to comply with the Subcontractors Conditions which are conditions precedent to coverage.

The court has previously ruled as to defaulting defendants Koam and Mohammad Aslam d/b/a RA Contracting, that Plaintiff: (1) is not required to defend Koam or Mohammad Aslam d/b/a RA Contracting in the Underlying Action; (2) is not required to indemnify Koam and Mohammad Aslam d/b/a RA Contracting in the Underlying Action; and (3) that PCIC may withdraw from representing Koam in the Underlying Action.

Plaintiff PCIC now moves for summary judgment against the sole appearing defendant, 391 Broadway, and for dismissal of 391 Broadway's counterclaims.

**Analysis**

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1<sup>st</sup> Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion’s opponent to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1<sup>st</sup> Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *DeRosa v City of New York*, 30 AD3d 323, 325 [1<sup>st</sup> Dept 2006]). The evidence presented in a summary judgment motion must be examined in the “light most favorable to the party opposing the motion” (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 [1<sup>st</sup> Dept 2010]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).


Plaintiff has met its burden to establish a *prima facie* entitlement to judgment as a matter of law. Defendant 391 Broadway has not submitted any opposition.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment is granted and Defendant 391 Broadway’s counterclaim is dismissed; and it is further

ORDERED and ADJUDGED that PCIC general liability insurance policy, no. PCIC5025-PCA91986-MA-02 issued to Koam for the period August 12, 2013 to August 12, 2014 does not provide coverage for claims asserted in the underlying action, pending in this

Court under Index No: 152687/2014, including all first and third party claims that were or could be asserted therein.

<u>4/29/2021</u>			
DATE			SHAWN TIMOTHY KELLY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE