

<b>National Gen. Ins. Co. v Hanley</b>
2021 NY Slip Op 32260(U)
November 9, 2021
Supreme Court, New York County
Docket Number: Index No. 155035/2020
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARTHUR ENGORON**

**PART**

**37**

*Justice*

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NATIONAL GENERAL INSURANCE COMPANY,  
Plaintiff,

- v -

JOSEPH HANLEY, VALERIE HANLEY, JOHN HANLEY,  
Defendants.

INDEX NO. 155035/2020

MOTION DATE 09/03/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion for

SUMMARY AND DEFAULT JUDGMENT

Upon the foregoing documents and for the reasons stated hereinbelow, plaintiff's motion is granted.

Background

In this insurance coverage dispute, plaintiff, National General Insurance Company ("National"), seeks a declaratory judgement that it has no duty to defend or indemnify defendants Joseph Hanley and Valerie Hanley (collectively, "the Hanleys") for the claims asserted against them by defendant John Hanley ("John") in John Hanley v Joseph Hanley and Valerie Hanley, filed in the Supreme Court of the State of New York, Richmond County, Index No. 150632/2020 ("the Underlying Action").

The relevant facts are as follows. National issued to the Hanleys Homeowners' Policy number 2004585555 ("the Policy"), covering the Hanley's then-home, 25 Sprague Court, Staten Island, New York ("the Premises"), effective from January 18, 2017, to November 14, 2017. NYSCEF Doc. No. 17.

The Policy is clear that the insured must give written notice of any policy-triggering "occurrence" to National "as soon as reasonably possible," and that not doing so could invalidate any claim if "the failure to provide such timely notice is prejudicial to [National]." Id.

On May 10, 2017, John was staying with the Hanleys when he allegedly fell down an interior staircase from the third floor to the second floor ("the Incident"). NYSCEF Doc. No. 10.

In or around October 2017 the Hanleys sold the Premises. NYSCEF Doc. No. 21.

On or about January 3, 2018, Valerie Hanley informed National that she had received a letter of representation from an attorney advising her that John had sustained bodily injury at the Premises during the Incident. NYSCEF Doc. 16.

In a letter dated February 6, 2018, National, while conducting its investigation, told the Hanleys that their failure to inform plaintiff timely of the Incident, and then only after selling the Premises, was likely to prejudice National and would likely lead plaintiff to disclaim coverage. NYSCEF Doc. No. 18.

National sent the Hanleys two more letters, dated June 16, 2018, and June 19, 2020, making clear its intention to disclaim coverage for the same reasons, while offering legal representation as the instant lawsuit was resolved. NYSCEF Doc. Nos. 19 and 20.

On February 22, 2018, at the behest of National, Roman & Associates, Inc., investigator Jackie Tam ("Tam") interviewed Valerie Hanley regarding the Incident. NYSCEF Doc. No. 22. During that interview Valerie Hanley made clear she was aware of the Incident at the time it occurred, though not of her duty to inform National, and confirmed the later sale of the Premises. NYSCEF Doc. No. 21.

On March 30, 2020, John filed the Underlying Action in Richmond County. NYSCEF Doc. No. 10.

On July 6, 2020, plaintiff filed the instant lawsuit seeking a judgement declaring it has no duty to defend the Hanleys in the Underlying Action. NYSCEF Doc. No. 1.

On July 16, 2020, the Summons and Complaint were properly served upon the Hanleys; an affidavit of service was filed July 23, 2020. NYSCEF Doc. Nos. 2 and 3.

On July 18, 2020, the Summons and Complaint were properly served upon John Hanley at his South Carolina residence through his step-father; an affidavit of service was filed July 24, 2020. NYSCEF Doc. No. 6.

On February 19, 2021, the Hanleys answered pro se with two affirmative defenses: (1) lack of subject matter jurisdiction, as the complaint should have been a cross-claim in the Underlying Incident; and (2) the lawsuit is premature, as discovery will show National was not prejudiced. NYSCEF Doc. No. 7.

On April 21, 2021, National's counsel sent a good faith letter to John seeking his answer. NYSCEF Doc. No. 15.

On July 12, 2021, National moved, pursuant to CPLR 3215, for a default judgement against John and, pursuant to CPLR 3212, for summary judgement against the Hanleys. NYSCEF Doc. No. 8.

On July 14, 2021, plaintiff served notice of the motion for summary judgement and default judgement upon defendants via the United States Postal Service; an affidavit of service was filed the same day. NYSCEF Doc. No. 27.

### Discussion

“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.” Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). Once that burden is met, the opponent must tender evidence in admissible form “sufficient to require a trial of material questions of fact on which he rests his claim ...mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.” Zuckerman v City of New York, 49 NY2d 447, 562 (1980).

To obtain a default judgement, a plaintiff must submit proof of service of the summons and complaint, the facts constituting the claim, the default, and the amount due. CPLR 3215. “Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

Courts “may not disregard clear provisions which the insurers inserted in [an insurance policy] and the insured accepted.” Caporino v Travelers Ins. Co., 62 NY2d 234, 239 (1984).

National has met its burden of establishing a prima facie showing of entitlement to judgement as a matter of law by submitting: the Policy; the complaint in the Underlying Action; an affidavit of National adjuster Daniel Brownsey, describing the Policy and National’s investigations (NYSCEF Doc. No. 16); an affidavit of National claims administrator Rose Brachio, describing her January 4, 2018, conversation with Valerie Hanley (NYSCEF Doc. No. 23); and an affidavit of investigator Tam describing her conversation with Valerie Hanley.

Here, National’s Policy was clear that the Hanleys were to give notice “as soon as is practical” of any accident or “occurrence” which might trigger the Policy and that failure to do so could be a breach of the policy. Despite that clear provision, the Hanleys did not inform National of the Incident until well after the fact, and, further, sold the Premises in the interim, making it difficult for National to investigate. Therefore, National is not obligated to defend or indemnify the Hanleys as to the claims asserted in the Underlying Action.

The Hanleys affirmative defenses, meanwhile, are unavailing as CPLR 601 does not require mandatory joinder of claims and National’s attempt to disclaim coverage is not premature.

Additionally, as National has provided proof of service and additional notice to John, and as he has failed to appear, answer or otherwise respond to the complaint, and as his time to do so has expired, plaintiff is entitled to a default judgement against him. CPLR 3215.

Conclusion

The motion of plaintiff, National General Insurance Company, is granted. The Clerk is hereby directed to enter a default judgement against John Hanley, pursuant to CPLR 3215, and summary judgement against Joseph Hanley and Valerie Hanley, pursuant to CPLR 3212, declaring that National is not obligated to defend or indemnify Joseph Hanley and Valerie Hanley for the claims asserted against them in John Hanley v Joseph Hanley and Valerie Hanley (Sup Ct, Richmond County, Index No. 150632/2020).



11/9/2021  
DATE

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ARTHUR 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