SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
222

Index No.: 510422/22
Motion Date: 10-24-

Mot. Seq. No.: 1

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PIK WAN WONG and TAK HONG CHAN,

Plaintiffs,

-against-

DECISION/ORDER

INTEGON NATIONAL INSURANCE COMPANY,
REX GENERAL, INC. and CHRISTINA CHO,

Defendants.
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Upon the following papers, listed on NYSCEF as document numbers 18-27 were read on this motion:

Defendant, INTEGON NATIONAL INSURANCE COMPANY ("Integon") moves for an Order pursuant to CPLR 3211(a)(1),(7) dismissing the Sixth Cause of Action and Seventh Cause of Action of Plaintiffs' Complaint with prejudice, together with such other and further relief as this Court deems just and proper.

Plaintiffs commenced this action in connection with a property damages insurance claim for alleged building damage caused by fire that occurred on or about January 25, 2021 at the premises located at 1962 85th Street, Brooklyn, New York 11214 (the "Premises"). Plaintiffs admit in their Complaint that at the time of the alleged fire, they did not reside at the Premises. The Declarations in the policy of insurance at issue identifies the two plaintiffs as the insureds under the policy and lists the "DESCRIBED LOCATION/RESIDENCE PREMISES" as 1962 85Th St Brooklyn, NY 11214-3102. The term "residence premises" is defined in the policy as follows:

> a. The one family dwelling where you reside;
>
> b. The two, three or four family dwelling where you reside in at least one of the family units; or c. That part of any other building where you reside; and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

The terms in the policy relevant to this motion not ambiguous.

A party moving for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (*see Alvarez v. Prospect Hosp.,* 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York,* 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). It is well settled that "[t]he construction of terms and conditions of an insurance policy that are clear and unambiguous presents a question of law to be determined by the court when the only issue is whether the terms as stated in the policy apply to the facts" (*Raino v. Navigators Ins. Co.,* 268 A.D.2d 419, 419–420, 702 N.Y.S.2d 94; *see also Briggs v. Allstate Ins. Co.,* 1 A.D.3d 392, 767 N.Y.S.2d 119). "[W]here re the provisions of the policy are clear and unambiguous, they must be given their plain and ordinary meaning, and courts should refrain from rewriting the agreement" (*Government Empls. Ins. Co. v. Kligler,* 42 N.Y.2d 863, 864, 397 N.Y.S.2d 777, 366 N.E.2d 865).

It is undisputed that the plaintiffs, the two the insureds under policy, did not reside at the "DESCRIBED LOCATION/RESIDENCE PREMISES" listed in policy. Defendant Integon therefore made prima facie showing of its entitlement to judgment as a matter of law by demonstrating that the subject premises were not covered under the policy at issue, and that it properly disclaimed coverage on this basis (*see Marshall v. Tower Ins. Co. of New York*, 44 A.D.3d 1014, 1015, 845 N.Y.S.2d 90, 91; see also *Megafu v. Tower Ins. Co. of New York*, 73 A.D.3d 713, 714, 899 N.Y.S.2d 857). The plaintiffs failed to raise a triable issue of fact in opposition to the cross motion.

Accordingly, it is hereby

ORDERED that the motion is GRANTED, and Sixth Cause of Action and Seventh Cause of Action of Plaintiffs' Complaint are dismissed with prejudice.

This constitutes the decision and order of the Court.

Dated: October 27, 2022

KINGS COUNTY CLERK
FILED

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PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020