

Travelers Prop. Cas. Co. of Am. v Vema Group, LLC

2023 NY Slip Op 31290(U)

April 21, 2023

Supreme Court, New York County

Docket Number: Index No. 161411/2019

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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THE TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, AS SUBROGEE OF WESTSIDE RADIOLOGY ASSOCIATES PC, MID-ROCKLAND IMAGING PARTNERS INC., KEY EQUIPMENT FINANCE, A DIVISION KEY BANK NATIONAL ASSOCIATION,

Plaintiff,

- v -

VEMA GROUP, LLC, 1790 BROADWAY ASSOCIATES, LLC, GOODHOPE MANAGEMENT CORP., BROADWAY, IONIAN MANAGEMENT INC., NORDSTROM, INC., JONES LANG LASALLE AMERICAS, INC., LIBERTY CONTRACTING CORP., KETCHAM PUMP COMPANY, INC., FIRE SAFETY ALARMS, INC, LLC, CONTROLLED COMBUSTION CO., INC., JOHN DOES 1-3,

Defendant.

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1790 BROADWAY ASSOCIATES, LLC, GOODHOPE MANAGEMENT CORP.

Plaintiff,

-against-

BROADWAY 57TH/58TH RETAIL INVESTOR, LLC, JT MAGEN & COMPANY, INC., LIBERTY CONTRACTING CORP., SAFWAY ATLANTIC, LLC, EXCALIBUR GROUP, LLC, JONES LANG LASALLE, INC., KETCHAM PUMP COMPANY, INC., FIRE SAFETY ALARMS, INC., CONTROLLED COMBUSTION CO., INC., JOHN DOE 1-10, (BEING FICTITIOUS ENTITIES)

Defendant.

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IONIAN MANAGEMENT INC.

Plaintiff,

-against-

GOODHOPE MANAGEMENT CORP.

INDEX NO. 161411/2019
MOTION DATE 04/06/2023
MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

Third-Party
Index No. 596092/2020

Second Third-Party
Index No. 595912/2022

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 363, 364, 365, 366, 367, 372, 373, 374, 375, 376, 377, 378

were read on this motion to/for Summary Judgment.

BACKGROUND

Ionian Management, Inc. (“Ionian”) filed a second third-party complaint against Goodhope Management Corp. (“Goodhope”) claiming that it is entitled to indemnification from Goodhope pursuant to a management services agreement between Goodhope and Ionian (the “Ionian Management Agreement”). Goodhope now moves for summary judgment dismissing the second third-party complaint, arguing that the second third-party claim is barred by this Court’s April 27, 2022 order dismissing plaintiff Travelers Property Casualty Company of America’s (“Travelers”) claims against Goodhope and 1790 Broadway Associates, LLC (“1790”) (the “Order”) finding that Travelers’ claims were barred by the waiver of subrogation provisions contained in the leases between 1790 and Mid—Rockland Imaging Partners, Inc. (“Mid-Rockland”) and/or Westside Radiological Associates, PC (“Westside”) and the Travelers insurance policy issued to Radnet, Inc. (the “Travelers Policy”).

For the reasons stated below, the motion is denied.

DISCUSSION

Ionian’s Third-Party Claim for Contractual Indemnification is Not Barred by Res Judicata or Collateral Estoppel

Ionian’s third-party claim for contractual indemnification is not barred by the application of the doctrine of *res judicata* or collateral estoppel.

Goodhope conflates the doctrines of *res judicata* and collateral estoppel with the doctrine of Law of the Case. As explained by the Court of Appeals:

The law of the case doctrine is part of a larger family of kindred concepts, which includes *res judicata* (claim preclusion) and collateral estoppel (issue preclusion). These doctrines, broadly speaking, are designed to limit relitigation of issues. Like claim preclusion and issue preclusion, preclusion under the law of the case contemplates that the parties had a “full and fair” opportunity to litigate the initial determination.

As distinguished from issue preclusion and claim preclusion, however, law of the case addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation *before* final judgment. *Res judicata* and collateral estoppel generally deal with preclusion after judgment: *res judicata* precludes a party from asserting a *claim* that was litigated in a prior action, while collateral estoppel precludes relitigating an *issue* decided in a prior action. Accordingly, law of the case has been aptly characterized as “a kind of intra-action *res judicata*” (Siegel, *New York Practice* § 448, at 723 [3d ed.]).

Res judicata and collateral estoppel are rules of limitation recognized in the CPLR. Indeed, in a civil proceeding a party is entitled, by statute, to a dismissal based on issue preclusion or claim preclusion (*see*, CPLR 3211[a] [5]), both of which are also designated as affirmative defenses (*see*, CPLR 3018[b]). Contrastingly, the law of the case doctrine is found in no New York statute.

Beyond these procedural differences, law of the case rests on a foundation that further distinguishes it from issue and claim preclusion. Whereas the latter concepts are rigid rules of limitation, law of the case is a judicially crafted policy that “expresses the practice of courts generally to refuse to reopen what has been decided, [and is] not a limit to their power” (*Messenger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152). As such, law of the case is necessarily “amorphous” in that it “directs a court's discretion,” but does not restrict its authority (*see*, *Arizona v. California*, 460 US, at 618, 103 S.Ct. 1382, 75 L.Ed.2d 318, *supra*).

People v. Evans, 94 N.Y.2d 499, 502–03 (2000)(Citations Omitted).

Based on the forgoing, Goodhope’s motion to dismiss pursuant to CPLR §3211(a)(5) is denied.

Even if the motion was made pursuant to the law of the case doctrine, the motion would still be denied. The issue of Goodhope’s duty to contractually indemnify Ionian was never

litigated in the course of the motion practice that resulted in the prior Order and the claim had not yet been asserted at the time.

Goodhope Has Failed to Establish Its Entitlement to Summary Judgment

To prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). “[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]).

“On a motion for summary judgment, the court’s function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact” (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] [“The court’s role, in passing on a motion for summary judgment, is solely to determine if any triable issues exist, not to determine the merits of any such issues”], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

Goodhope argues that for the water losses to be attributable to Ionian’s provision of services, the Ionian Management Agreement must necessarily countenance piping or building

maintenance. However, to be entitled to indemnification, Ionian's services need not be expressly, specifically related to the precise cause of the water losses; it is sufficient that there is "some causal relationship between the injury and the risk for which coverage is provided." *Regal Const. Corp. v Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 15 NY3d 34, 38 (2010) citing *Maroney v New York Cent Mut Fire Ins.* 5 NY3d 467, 472 (2005).

The Ionian Management Agreement sets forth the scope of services that Ionian will provide to Goodhope, as follows: These services are primarily for accounting purposes, as acknowledged by Ionian, and are specified as:

- (a) General administrative services;
- (b) Accounting and relates [sic] services;
- (c) Tax and related services;
- (d) Insurance and risk management services;
- (e) Human resources services;
- (f) Management information systems services;
- (g) Research and development, and related technical services;
- (h) Freight and transportation services; and
- (i) Such other services as the parties mutually agree upon from time to time.

These are the same broad designation of services contained in the Goodhope Management Agreement. Accordingly, any of the services that Goodhope contracted to provide 1790, are also within the scope of the Ionian Management Agreement.

The indemnity clause of the Ionian Management Agreement states that:

Goodhope assumes all liability for and agrees to defend, indemnify, and hold Ionian... harmless from and against all demands, liabilities, damages, costs and expenses... incurred by Ionian arising from or in connection with the management services, other than any Loss caused by the gross negligence or willful misconduct of Ionian.

Where a contract does not specify responsibility for a discrete portion of work, there remain questions of fact as to whether there is a connection between an alleged injury and the scope of a party's responsibilities under contract. In *Regal Const. Corp. v Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 15 NY3d 34, 38 [2010], the Court of Appeals held:

We have interpreted the phrase “arising out of” in an additional insured clause to mean “originating from, incident to, or having connection with” [...] It requires “only that there be some causal relationship between the injury and the risk for which coverage is provided.” the focus of the inquiry “is not on the precise cause of the accident but the general nature of the operation in the course of which the injury was sustained.”

See also Wausau Underwriters Ins. Co. v Old Republic Gen. Ins. Co., 122 F Supp 3d 44, 50

[SDNY 2015] (allegation that injury arose out of defendant’s “ongoing operations” was sufficient to trigger additional insured provisions). Goodhope has failed to establish that Ionian’s services pursuant to the Ionian Management Agreement did not involve actions which may have resulted in the water losses. Goodhope bears the burden of establishing the absence of any genuine issue of material fact, and it has failed to do so.

WHEREFORE it is hereby:


ORDERED that the motion is denied in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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4/21/2023
DATE

SABRINA KRAUS, 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