

Atlantic Specialty Ins. Co. v Sugar Bay Club & Resort Corp.

2023 NY Slip Op 33206(U)

September 8, 2023

Supreme Court, New York County

Docket Number: Index No. 653684/2020

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 41

-----x
 ATLANTIC SPECIALTY INSURANCE COMPANY,

Plaintiff

Index No. 653684/2020

- against -

DECISION AND ORDER

SUGAR BAY CLUB AND RESORT CORP., JOSEPH
 MOINIAN, MOIN MOINIAN (a/k/a DAVID
 MOINIAN), and MORRIS MOINIAN,

Defendants

-----x
 LUCY BILLINGS, J.S.C.:

In an order dated October 17, 2022, the court granted plaintiff's motion for a preliminary injunction to the extent of ordering defendants, jointly and individually, to deposit with plaintiff cash or other collateral security with a value of at least \$780,805.47. C.P.L.R. §§ 6301, 6312(a). The court found this amount the reasonable value of losses plaintiff might sustain from its execution of bonds on defendant Sugar Bay Club and Resort's behalf. Colonial Sur. Co. v. Eastland Constr., Inc., 77 A.D.3d 581, 582 (1st Dep't 2010); BIB Constr. Co. v. Fireman's Ins. Co. of Newark, N.J., 214 A.D.2d 521, 523 (1st Dep't 1995). These losses comprised nonparty Carolyn Esperson's claim of \$712,595.37 against the bond, which plaintiff had paid; her further claim against Sugar Bay Club and Resort for attorneys' fees of \$26,540.50; and plaintiff's claimed attorneys'

fees of \$41,669.60 incurred in this action.

Plaintiff now moves for summary judgment for that total \$780,805.47. C.P.L.R. § 3212(b). Defendants do not oppose a judgment for \$712,595.37 on plaintiff's third claim, since plaintiff has paid that amount. C.P.L.R. § 3212(b) and (e). Plaintiff has not established, however, that it is entitled to the attorneys' fees Esperson claims against Sugar Bay Club and Resort of \$26,540.50, since the court in her underlying action against Sugar Bay Club and Resort has not awarded her any fees, nor has plaintiff established the attorneys' fees it has incurred in this action. To protect plaintiff's potential recovery of those two amounts, the court already has ordered defendants to provide security for those amounts, albeit plaintiff's attorneys' fees incurred in this action now may have increased. In any event, plaintiff seeks summary judgment only on defendants' liability for plaintiff's attorneys' fees and expenses, its fourth and fifth claims, and the parties stipulate to the hearing and determination by a referee of the reasonable amount of fees and expenses plaintiff has incurred in this action. C.P.L.R. §§ 3212(b) and (e), 4317.

Consequently, the court grants plaintiff's motion for summary judgment for \$712,595.37 on its third claim. C.P.L.R. § 3212(b) and (e). The court also grants plaintiff's motion for summary judgment on defendants' liability on its fourth and fifth

claims for its attorneys' fees and expenses. Id.

The court refers the issue of the amount of reasonable attorneys' fees and expenses to be awarded to plaintiff to the Special Referee Clerk for placement at the earliest possible date on the calendar of the Special Referees' Part, which at the initial appearance shall assign this issue to an available Judicial Hearing Officer (JHO) or Special Referee to hear and determine. C.P.L.R. § 4317. Within 15 days after entry of this order, plaintiff shall serve the order on defendants and shall submit to the Special Referee Clerk the Information Sheet accessible at the "References" link on the court's website, completed with all the information called for. The Special Referee Clerk then shall advise the parties of the date to appear on the Special Referees' Part calendar. The parties shall appear on that date with all witnesses and other evidence the parties seek to introduce and be ready to proceed with the assessment of attorneys' fees and expenses. Unless the assigned JHO or Special Referee orders otherwise, the assessment shall proceed from day to day. Plaintiff shall be entitled to a judgment for the reasonable attorneys' fees and expenses awarded. C.P.L.R. § 3212(b) and (e).

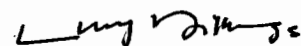
The court grants plaintiff's motion to the extent it seeks a permanent injunction ordering defendants, jointly and individually, to deposit with plaintiff cash or other collateral

security with a value of at least \$68,210.10, the sum of Esperson's claim against Sugar Bay Club and Resort for attorneys' fees of \$26,540.50 and plaintiff's previously claimed attorneys' fees of \$41,669.60 incurred in this action. The latter amount secures plaintiff's potential recovery to be determined after the hearing. Plaintiff claims this amount now has increased to \$70,128.09, but plaintiff has not supported any of its fees or expenses with admissible evidence.

Plaintiff shall return to defendants any collateral that exceeds the losses plaintiff is determined to have actually incurred. The court otherwise denies plaintiff's motion. If plaintiff ultimately pays any attorneys' fees awarded to Esperson against Sugar Bay Club and Resort, plaintiff may move again for summary judgment for that amount.

The court vacates its preliminary injunction dated October 17, 2022, including the \$35,000.00 undertaking the court required plaintiff to deposit with the Clerk of the Court. C.P.L.R. § 6312(b). Upon plaintiff's presentation of this order with notice of entry, the Clerk of the Court shall return its deposit of \$35,000.00.

DATED: September 8, 2023



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C