

**Manhattan Concrete LLC v Prime Prop. & Cas. Ins.  
Inc.**

2023 NY Slip Op 34534(U)

December 21, 2023

Supreme Court, New York County

Docket Number: Index No. 656746/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

-----X

MANHATTAN CONCRETE LLC,  
Plaintiff,

**INDEX NO.** 656746/2020

**MOTION DATE** 12/19/2023

**MOTION SEQ. NO.** 003

- v -

PRIME PROPERTY & CASUALTY INSURANCE  
INC.,OVATION RISK PLANNERS, INC.,  
Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

PRIME PROPERTY & CASUALTY INSURANCE INC.  
Plaintiff,

Third-Party  
Index No. 596048/2021

-against-

SCOTTISH AMERICAN INSURANCE GENERAL AGENCY,  
INC.  
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140

were read on this motion to/for MISCELLANEOUS.

The motion by non-parties LGA Hospitality Group (“LGA”) and Atria Builders LLC (“Atria”) (collectively, “Movants”) to intervene is granted.

**Background**

In September and October 2018, two employees of plaintiff were injured while at a construction site in Brooklyn. Plaintiff claims that it purchased a construction contractor liability insurance policy from defendant Prime Property & Casualty Insurance Inc. (“Prime”) for the period from August 1, 2018 through August 1, 2019. Both of the injured employees commenced

lawsuits in Kings County and plaintiff contends that Prime denied coverage for defense and indemnification in both cases. Plaintiff contends that it complied with all the terms and conditions of the policy and asserts that the denial of coverage was improper.

Prime offers a different version of events. It claims that plaintiff withheld critical information in its application for insurance, information which would have caused Prime to not issue the policy. Prime alleges that plaintiff had a previous policy which was cancelled due to plaintiff's non-payment of the premium, among numerous misrepresentations. Ovation was plaintiff's insurance broker.

In this motion, Movants point out that defendant Prime asserted a counterclaim in which it sought declaratory relief rescinding insurance policies in five lawsuits, one of which involves Movants (*see* NYSCEF Doc. No. 19, ¶ 71). Movants explain that this particular lawsuit in Queens County, captioned *Salgado v Atria Builders, LLC* (Index No. 714433/2018), involves both of them. In the Queens action, the plaintiff brings Labor Law claims naming both Movants as defendants (LGA is the owner of the property and Atria is the general contractor).

Movants observe that Atria hired plaintiff to act as an excavation contractor at the premises. They observe that the contract between Atria and plaintiff required plaintiff to obtain general liability insurance that names both Movants as additional insureds and plaintiff procured such a policy from Prime. Movants contend that they should be permitted to intervene in this case because Prime seeks to rescind the insurance policy it issued to plaintiff under which Movants could seek coverage as additional insureds.

In opposition, Prime observes that document discovery is completed but no depositions have occurred. It argues that the parties are exploring a settlement and permitting Movants to intervene would frustrate the parties' settlement in principle. Prime argues that the Queens case

has proceeded and that Movants waited until almost two years after learning of Prime's effort to rescind the policy related to the Queens case before moving to intervene in this action. It argues that Movants' interests are adequately represented by plaintiff in this case.

Plaintiff also submits opposition in which it adopts most of the arguments raised by Prime, although plaintiff makes clear it objects to Prime's characterization of the underlying facts of this action (relating to alleged misrepresentations by plaintiff).

In reply, Movants contend that no party in this action disputes their interest in this case—namely that Movants seek additional insured coverage under a policy that Prime seeks to rescind. They emphasize that no depositions have occurred in this case. Movants dispute that they knew about Prime's effort to rescind the subject insurance policy for more than two years and argue that, in any event, they initially believed that plaintiff was properly defending this counterclaim. However, Movants insist that when they learned that plaintiff was not pursuing depositions, they made the instant motion.

### **Discussion**

“Consideration of any motion to intervene begins with the question of whether the motion is timely. In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party” (*Yuppie Puppy Pet Products, Inc. v St. Smart Realty, LLC*, 77 AD3d 197, 201, 906 NYS2d 231 [1st Dept 2010]).

“Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action. Distinctions between intervention as of right and discretionary intervention are no longer sharply applied” (*id.*).

The Court finds, as an initial matter, that the instant motion is timely. As Movants observe, the parties have not yet completed discovery. In fact, there is no dispute that no depositions have occurred despite multiple discovery stipulations insisting that depositions would go forward (*see e.g.*, NYSCEF Doc. Nos. 76, 123). Moreover, the record clearly shows that Movants have a bona fide interest in this action. They demonstrated they intend to seek additional insurance coverage under a policy that Prime seeks to rescind in this case. Of course, that justifies their intervention in this action.

Neither Prime nor plaintiff disputes Movants' recitation of their connection to this case. Instead, they argue that permitting intervention will hinder a settlement. But no settlement has been executed. This case is from 2020 – there has been ample opportunity to settle; even with the obvious potential of parties intervening, the case has not settled. The mere hope that a settlement will be reached shortly is not a basis to prevent Movants from intervening in this case.

The Court also rejects Prime's assertion that Movants waited too long. The fact is that the parties have not yet done a single deposition and so there is no prejudice to the parties already in this action. This is not a situation in which this case is on the trial calendar or dispositive motions are fully briefed. And Movants should have a say in a matter where Prime seeks to rescind a contract that may provide Movants coverage as additional insureds.

Accordingly, it is hereby

ORDERED that the motion to intervene is granted and that LGA Hospitality Group and Atria Builders LLC be permitted to intervene in the above-entitled action as a party plaintiffs; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding LGA Hospitality Group and Atria Builders LLC as party plaintiffs and listing same as the last plaintiffs in the caption; and it is further

ORDERED that the proposed intervention pleading<sup>1</sup> shall be deemed to have been served upon uploading this pleading and serving a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenors shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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)]; and it is further

See NYSCEF Doc. No. 135 concerning the next conference.

12/21/2023  
DATE

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ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

CHECK IF APPROPRIATE:

<sup>1</sup> The Court observes that although Movants cited to a proposed pleading they uploaded as exhibit G, no such document was uploaded to NYSCEF.