

City Univ. of N.Y. v Utica First Ins. Co.

2024 NY Slip Op 31477(U)

April 12, 2024

Supreme Court, New York County

Docket Number: Index No. 656930/2019

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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CITY UNIVERSITY OF NEW YORK, STALCO
CONSTRUCTION INC.

Plaintiff,

- v -

UTICA FIRST INSURANCE COMPANY,

Defendant.

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INDEX NO. 656930/2019

MOTION DATE 11/16/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Plaintiffs City University of New York and Stalco Construction Inc. ("Plaintiffs") move for a motion to renew pursuant to CPLR 2221(e). In its motion to renew, Plaintiffs argue there was critical evidence that was not made known to the court or to Plaintiffs at the time Defendant Utica First Insurance Company ("Defendant") opposed Plaintiffs' original motion. Specifically, Plaintiffs contend that at the time of their original motion for summary judgment, Defendant argued in their opposition to the motion that as of February 10, 2016, its investigation was impeded, and they were unable to learn whether the employee was covered, due to external reasons out of its control. Plaintiffs allege, however, that after their original motion, Plaintiffs learned through discovery that Defendant knew it could disclaim coverage based on the employee's employment relationship, 51 days before they in fact disclaimed.

In opposition, Defendant contends that Plaintiffs' motion for leave to renew should be denied because, among other things, they fail to present a "reasonable justification for the failure to present such facts on the prior motion," pursuant to CPLR R. 2221(e)(3). Defendant contends that not only are Plaintiffs not entitled to coverage under the policy, here, the motion should be denied as Plaintiffs waited more than three years into the litigation to conduct discovery and after they already originally moved for summary judgment.

CPLR 2221(e) provides, a motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion. See CPLR 2221(e). However, New York Courts have repeatedly held that while a motion for leave to renew shall be premised on the finding of new evidence, this requirement is a flexible one and the court, in its discretion, may also grant renewal, in the interest of justice, upon facts which were known to the movant at the time the original motion was made. *Tishman Constr. Corp. v. City of New York*, 280 A.D.2d 374, 376 (1st Dep't 2001) (internal citations omitted). Moreover, even where vigorous requirements for renewal are not met, such relief may be properly granted so as not to "defeat substantive fairness". *Id.* See also *Framapac Delicatessen v. Aetna Cas. & Sur. Co.*, 249 A.D.2d 36 (1st Dep't 1998) (internal citations omitted); *Weisser v Park Lane Foods*, 202 A.D.2d 496, 610 (2d Dep't 1994); *Friedman v U-Haul Truck Rental*, 216 A.D.2d 266, 627 (2d Dep't 1995).

Here, the Court find that the new evidence presented by Plaintiffs warrant renewal of their summary judgment motion. Although Plaintiffs could have conducted discovery prior to filing their original motion for summary judgment, they had a good faith basis for making the

original motion, and there is no prejudice to the defendant in allowing the plaintiffs to move again for summary judgment based on the discovery that they have obtained during the course of the litigation. Moreover, it does not serve judicial economy to have a trial, and ultimately have the plaintiff move for a directed verdict, when the matter can be resolved prior to trial. As it is within the Court's discretion to grant renewal where there is new evidence, the Court finds such renewal is appropriate in the present matter.

The Court finds that based on the new evidence presented, Plaintiff has made its *prima facie* entitlement to summary judgment on its claim for coverage by the Defendant pursuant to New York Insurance Law 3420(d). Insurance Law § 3420(d) imposes an affirmative obligation on an insurer denying coverage to disclaim liability or deny coverage within a reasonable time period. Timeliness of an insurer's disclaimer is measured from the point in time when the insurer first learns of the grounds for disclaimer of liability or denial of coverage. *First Fin. Ins. Co. v. Jetco Contr. Corp.*, 1 N.Y.3d 64, 69 (2003) (internal citations omitted). While there is no exact number of days which the court deems as reasonable, New York Courts have repeatedly held that delays beyond 30 days, especially without justification, are unreasonable as a matter of law. *Id.*; See Also *Hartford Ins. Co. v. Cnty. of Nassau*, 46 N.Y.2d 1028, 1029–30 (1979); *West 16th St. Tenants Corp. v. Pub. Serv. Mut. Ins. Co.*, 290 A.D.2d 278, 736 (1st Dep't 2002); *Matter of Nationwide Mut. Ins. Co. v. Steiner*, 199 A.D.2d 507, 507–08 (2d Dep't 1993); *Scottsdale Ins. Co. v. Utica First Ins. Co.* 103 A.D. 3d 701, 962 N.Y.S. 2d 151 (2d Dept 2013). An insurer who delays in giving written notice of disclaimer bears the burden of justifying the delay. *Id.*

Here, the new evidence presented by Plaintiffs shows that Defendant learned of its ability to disclaim coverage on January 27, 2016. Despite this, the disclaimer was not sent until March 18, 2016, 51 days later. Here, Defendant has failed to provide any adequate explanation why it

took 51 days to disclaim. That Defendant alleges it was under the impression based on communications with Travelers Insurance that there may not be an underlying action, is irrelevant as Defendant could have and should have disclaimed regardless. Moreover, as Travelers is a not party to this action, the Court finds Defendants equitable estoppel argument unavailing. Therefore, the Court finds that Defendants delay was unreasonable as a matter of law.

Accordingly, it is hereby

ADJUDGED that Plaintiffs' motion to renew is granted; and it is further

ADJUDGED that Plaintiffs' motion for summary judgment is granted; and it is further

ORDERED that Defendant must defend and indemnify Plaintiffs in connection with the underlying suit on a primary noncontributory basis; and it is further

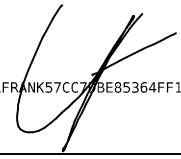
ORDERED that Defendant must reimburse plaintiff for all defense costs incurred on their behalf in connection with the underlying suit; and it is further

ORDERED that an assessment of damages against Defendant as to defense costs in the underlying action is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon 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 at the address www.nycourts.gov/suptctmanh)

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4/12/2024

DATE

LYLE E. FRANK, 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