

Ahmed v Mountain Val. Indem. Co.

2024 NY Slip Op 35183(U)

October 10, 2024

Supreme Court, Bronx County

Docket Number: Index No. 816576/2023E

Judge: Wilma Guzman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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IFTIKAR AHMED,

Plaintiff,

DECISION & ORDER

-against-

Index No.: 816576/2023E

MOUNTAIN VALLEY INDEMNITY COMPANY,
2777 WEBSTER, LLC., RAZA ASSOCIATES, INC.,
Jane Doe, John Doe, and XYZ Corporation,

Motion Sequence No. 2

Defendants.

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GUZMAN, J.

This action arises from a fire that occurred on February 20, 2022, at 2777 Webster Avenue, Bronx, New York. On the date of the fire, Plaintiff owned adjacent premises at 2779 Webster Avenue, which consists of a two-family residence with commercial space on the ground floor. Plaintiff alleges that he resided in one of the residential units; tenants resided in the second unit; and a commercial tenant occupied the ground floor of the premises. Plaintiff further alleges that the fire destroyed his residence and rendered it uninhabitable.

On the date of the fire, Plaintiff had a homeowners insurance policy (“the Policy”) through Defendant Mountain Valley Indemnity Company (“Mountain Valley”) which was procured for him by an insurance broker, Defendant Raza Associates, Inc. (“Raza”). The Policy consisted of a “Homeowners 2 Broad Form” and Declarations. Section 1 of the Policy, entitled “Property Coverages,” provides in “Coverage A” that Mountain Valley will cover “the dwelling on the ‘residence premises shown in the Declarations.’” The term “Residence Premises” is defined as:

- a. The one family dwelling, other structures, and grounds; or
- b. That part of any other building;

where you reside and which is shown as the “residence premises” in the Declarations.

“Residence premises” also means a two family dwelling where you reside in at least one of the family units and which is shown as the “residence premises” in the Declarations.

The Declarations page indicated that the premises consisted of a one-family dwelling with primary occupancy. *See* NYSCEF Doc. 25.

On or about March 12, 2022, Plaintiff filed a claim under the Policy for the loss, which he estimated to be approximately \$900,000.00. Eight months later, by letter dated November 29, 2022, Mountain Valley denied coverage for Plaintiff's claim, asserting that (1) the premises was not his residence or primary residence at the time of the loss; and (2) "The presence of a commercial occupant at the Premises and two apartments is not a structural configuration that falls within the definition of a covered "residence premises," meaning that the commercial space removed the premises from the definition of a "residence premises" as set forth in the policy. In denying the claim, Mountain Valley also alleged that Plaintiff falsely testified at an Examination Under Oath that he resided at the premises. This action ensued.

Insofar as is relevant here, the complaint contains a single count of negligence against Raza, alleging that Raza had a duty to procure the proper insurance policy for Plaintiff, Raza represented to Plaintiff that it had procured the proper insurance policy for the premises, but it procured the wrong type of insurance. Plaintiff also alleges that Raza made material misrepresentations to Plaintiff that the property was properly insured. On this motion, Raza moves pursuant to CPLR §§ 3211(a)(1) and (a)(7) to dismiss the complaint.

A motion to dismiss pursuant to CPLR § 3211 (a) (1) based on documentary evidence may be granted "only where the documentary evidence utterly refutes [the claimant]'s factual allegations, conclusively establishing a defense as a matter of law." *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858 (2002); see *Carbone v. Deutsche Bank Natl. Tr. Co.*, 145 A.D.3d 848, 849, 44 N.Y.S.3d 147 (2d Dept 2016). A document qualifies as "documentary evidence" for purposes of CPLR § 3211 (a)(1) if it is (1) unambiguous, (2) of undisputed authenticity, and (3) its contents are essentially undeniable. *VXI Lux Holdco S.A.R.L. v. SIC Holdings, L.L.C.*, 171 A.D.3d 189, 193, 98 N.Y.S.3d 1 (1st Dep't 2019). Documents such as judicial records, mortgages, deeds, contracts, and other papers, the contents of which are essentially undeniable, have been found to qualify as documentary evidence. *Vasquez v. Kennedy*, 221 A.D.3d 936, 937, 201 N.Y.S.3d 110, 112 (2d Dep't 2023).

Here, in support of its motion, Raza contends that:

[T]he judicial admissions contained in Plaintiff's Complaint and Mountain Valley's Motion to Dismiss show that the Policy was procured by Raza and duly issued by Mountain Valley to Plaintiff, which contained the coverage that was requested by the Plaintiff. These judicial admissions further show that the only reason coverage was denied to Plaintiff was because, as a result of Mountain Valley's claim investigation process, it determined that Plaintiff was not truthful about his primary residence, which violated the terms and

conditions of the Policy. Nowhere in Mountain Valley's denial letter does it indicate that Plaintiff was denied coverage under the Policy because he was procured the wrong type of insurance policy, because Raza was negligent in providing the Policy Plaintiff received, or because Raza made material misrepresentations in procuring the Policy issued by Mountain Valley.

See NYSCEF Doc. 16 at 10.

A party's assertion of fact in a pleading may constitute a judicial admission. See *Brevet Direct Lending—Short Duration Fund, L.P. v. Aprio LLP*, 228 A.D.3d 449, 450, 213 N.Y.S.3d 294, 296 (1st Dep't 2024). Nevertheless, Raza does not explain what statements in the complaint allegedly constitute judicial admissions that conclusively establish Raza's defense as a matter of law. As noted above, under CPLR § 3211 (a)(1), a defendant may only prevail if its documentary evidence "utterly refutes" plaintiff's claims. *Leon v Martinez*, 84 NY2d 83, 614 N.Y.S.2d 972 (1994). Here, Raza has failed to meet its burden. Additionally, to the extent that Raza argues that the November 29, 2022, letter issued by MVIC denying Plaintiff's insurance qualifies as documentary evidence, the Court notes that "[n]either affidavits, deposition testimony, nor letters are considered documentary evidence within the intendment of CPLR 3211 (a) (1)." *Granada Condominium III Assn. v Palomino*, 78 A.D.3d 996, 997, 913 N.Y.S.2d 668 (2d Dep't 2010) (internal quotation marks omitted); *Cives Corp. v. George A. Fuller Co., Inc.*, 97 A.D.3d 713, 948 N.Y.S.2d 658 (2d Dep't 2012). Similarly, Raza's conclusory statement that a prior motion filed by Mountain Valley in this action--which was subsequently withdrawn--also contains "judicial admissions" that warrant dismissal of Plaintiff's complaint is neither explained nor supported by legal analysis. The Court also notes that Raza's statement that "the only reason coverage was denied to Plaintiff was because, as a result of Mountain Valley's claim investigation process, it determined that Plaintiff was not truthful about his primary residence" is not accurate.

As noted above, Raza also moves to dismiss the complaint insofar as asserted against it for failure to state a claim. When ruling on a motion to dismiss pursuant to CPLR § 3211(a)(7), the Court must read the four corners of the pleading to determine if the pleader has a cause of action. *IKB Intl., S.A. v. Wells Fargo Bank, N.A.*, 40 N.Y.3d 277, 291, 197 N.Y.S.3d 719 (2023). The Court must determine from the facts as pled, and the inferences which can be drawn from those facts, whether the pleader has any legally cognizable cause of action. See *Frank v. DaimlerChrysler Corp.*, 292 A.D.2d 118, 120-21, 741 N.Y.S.2d 9, 12 (1st Dep't 2002), *lv den.* 99 N.Y.2d 502 (2002). The factual allegations contained in the complaint are deemed true and afforded every favorable inference, although legal conclusions and facts contradicted on the record are not entitled to such a

presumption. *Matter of Loukoumi, Inc.*, 285 A.D.2d 595, 596, 728 N.Y.S.2d 383, 383-384 (2d Dep't 2001).

Here, Raza states that “[t]he evidence before the Court, including the Complaint and its attachments, indicates that Plaintiff was indeed issued the type of policy he requested for his alleged residence at the Premises, and was only denied coverage because he violated the terms and conditions of the Policy.” See NYSCEF Doc. 16. Nevertheless, when a party moves to dismiss a complaint for failure to state a cause of action, the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. *Behar v. Glickenhau Westchester Development, Inc.*, 122 A.D.3d 784, 996 N.Y.S.2d 678 (2d Dep't 2014). “Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus.” *EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19, 799 N.Y.S.2d 170 (2005). Here, viewing the facts alleged in the complaint in the light most favorable to Plaintiff, as is required on a motion to dismiss, Raza has not established that Plaintiff does not have a cause of action for negligence. As noted above, while Raza contends that Plaintiff’s claim was denied only on the grounds that he did not reside in one of the units, the claim was also denied on the grounds that the dwelling at issue did not fall within the definition “residence premises” under the terms of the policy. See, e.g., *Almonte v. Castlepoint Ins. Co.*, 3 N.Y.S.3d 284, 45 Misc. 3d 1218(A) (Sup. Ct. New York Co. 2014), *aff'd*, 140 A.D.3d 658, 33 N.Y.S.3d 718 (1st Dep't 2016). The complaint, liberally construed, alleges, *inter alia*, that Raza did not procure the proper insurance policy for the property because the premises did not fall within the policy’s grant of coverage.

“Under New York law, a party who has engaged a person to act as an insurance broker to procure adequate insurance is entitled to recover damages from the broker if the policy obtained does not cover a loss for which the broker contracted to provide insurance, and the insurance company refuses to cover the loss.” *Bruckmann, Rosser, Sherrill & Co., L.P. v. Marsh United States, Inc.*, 65 A.D.3d 865, 866, 885 N.Y.S.2d 276, 277 (1st Dep't 2009) (quotation marks and citation omitted). Additionally, “[a]n insurance agent or broker can be held liable in negligence if he or she fails to exercise due care in an insurance brokerage transaction.” *Id.* A broker fails to exercise due care “when an insurance policy does not cover a loss for which the broker was contracted to obtain coverage.” *Cosmos, Queens Ltd. v Matthias Saechang Im Agency*, 74 A.D.3d 682, 683, 904 N.Y.S.2d 386 (1st Dep't 2010). Here, the Court finds that Plaintiff has adequately pleaded that Raza breached its duty of care by failing to procure an insurance policy that covered the premises in question. Proximate cause is generally a question of fact for the jury. See *Mt. Vernon Fire Ins. Co. v. Trans World Maintenance Service, Inc.*, 169 A.D.2d 519, 564 N.Y.S.2d 375 (1st Dep't 1991). Raza’s

motion to dismiss this claim for failure to state a cause of action is therefore denied. Accordingly, it is hereby:

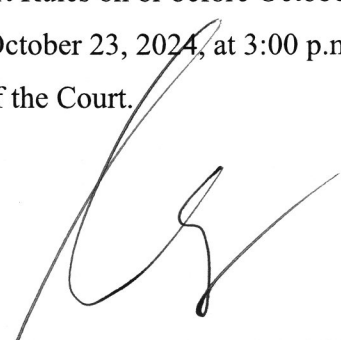
ORDERED AND ADJUDGED that the motion filed by Defendant Raza Associates, Inc. to dismiss the complaint is denied; and it is further

ORDERED AND ADJUDGED that Defendant shall serve a copy of this Decision & Order with notice of entry within twenty days of entry; and it is further

ORDERED AND ADJUDGED that counsel for the parties shall submit a proposed Preliminary Conference Order pursuant to this Court's Part Rules on or before October 23, 2024, or in the alternative, appear for an in-person conference on October 23, 2024, at 3:00 p.m.

The foregoing constitutes the Decision & Order of the Court.

Dated: Bronx, New York
October 10, 2024



HON. WILMA GUZMAN, J.S.C.