

Cambridge Mut. Fire Ins. Co. v Meenan Oil Supply
2024 NY Slip Op 35280(U)
March 29, 2024
Supreme Court, Nassau County
Docket Number: Index No. 610140/2021
Judge: Sarika Kapoor
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAUPRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF THE SUPREME COURT-----X
CAMBRIDGE MUTUAL FIRE INSURANCE COMPANY,
a/s/o DAVID M. FERNANDES,TRIAL/IAS PART 34
Index No.: 610140/2021

Plaintiff,

DECISION AND ORDER

v

MEENAN OIL SUPPLY, JOHN CAIAZZO, and GINA
CAIAZZO,Motion Seq. Nos.:
001, 002, 003
Motion Submission Date:
01/16/2024Defendants.
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NYSCEF document nos. 52-62, 79-148, and 153-166 were read and considered in deciding these motions.

Relief Requested

Motion Sequence 001: The plaintiff moves for summary judgment on the issue of liability.

Motion Sequence 002: The defendant Meenan Oil Supply cross-moves for summary judgment dismissing the complaint and all cross-claims insofar as asserted against it, to preclude the plaintiff from offering evidence at trial due to spoliation of evidence, and, in the event summary judgment is denied, to permit it to depose the plaintiff's two experts due to spoliation of evidence.¹

Motion Sequence 003: The defendants John Caiazzo and Gina Caiazzo cross-move for summary judgment dismissing the complaint and all cross-claims insofar as asserted against them.²

Background

In this subrogation action, the plaintiff, Cambridge Mutual Fire Insurance Company (hereinafter Cambridge), as the first party property insurer and subrogee of David M. Fernandes,

¹ Although Meenan, in its notice of cross-motion, cross-moves for summary judgment dismissing all cross-claims insofar as asserted against it, its moving papers fail to address the cross-claims. Therefore, that branch of Meenan's cross-motion which seeks such relief is deemed abandoned (*see Shehu v Board of Mgrs. of 210 Joralemon St. Condominium*, 2020 NY Slip Op 33104[U], *22 [Sup Ct, New York County 2020]).

² Although the Caiazzos, in their notice of cross-motion, cross-move for summary judgment dismissing all cross-claims insofar as asserted against them, their moving papers fail to address the cross-claims. Therefore, that branch of the Caiazzos' cross-motion which seeks such relief is deemed abandoned (*see id.*).

seeks to recover damages for negligence and breach of contract in connection with a fire that occurred at real property located at 179 Green Valley Road, East Meadow, New York 11554 (hereinafter the premises).

The premises are owned by Fernandes, who obtained a policy of insurance from Cambridge that covered real and personal property located at the premises. At all relevant times, the premises were leased by the defendants John Caiazzo and Gina Caiazzo (hereinafter together the Caiazzos), who contracted with the defendant Meenan Oil Supply (hereinafter Meenan) to service the premises' heating equipment.

On December 11, 2020, there was a fire at the premises. Thereafter, pursuant to its insurance policy, Cambridge made payments to Fernandes for the property damage caused by the fire.

Between December 12, 2020, and December 15, 2020, Michael E. Belfi of Belfi HVAC Consulting, Inc., and Thomas Karn of Hayden Karn Consulting, Inc., each performed an investigation to assist in determining a cause of the fire. Thereafter, on January 27, 2021, Fernandes contracted with Meenan to remove and replace the premises' heating equipment.

On August 9, 2021, Cambridge, as the first-party property insurer and subrogee of Fernandes, commenced this subrogation action by filing a summons with notice. Cambridge alleges that the defendants were negligent in servicing and maintaining the premises' heating equipment and that their negligence was a proximate cause of the fire. Cambridge further alleges that by failing to service and maintain the premises' heating equipment in a non-negligent manner, the defendants breached their respective lease and service agreements. Issue was joined with the defendants' answers containing general denials, affirmative defenses, and cross-claims.

Cambridge moves for summary judgment on the issue of liability; Meenan cross-moves, inter alia, for summary judgment dismissing the complaint insofar as asserted against it, to preclude the plaintiff from offering evidence at trial due to spoliation of evidence, and, in the event summary judgment is denied, to permit it to depose the plaintiff's two experts due to spoliation of evidence; and the Caiazzos cross-move, inter alia, for summary judgment dismissing the complaint and insofar as asserted against them. Each motion sequence has been fully briefed with opposition and reply.

Analysis

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the proponent fails to meet their initial burden summary judgment must be denied "regardless of the sufficiency of the opposing papers" (*id.* at 853). However, once the proponent has made a prima facie showing of entitlement, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form (*see Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065 [1979]).

Motion Sequence 001

Cambridge moves for summary judgment on the issue of liability. To this end, Cambridge argues that pursuant to the lease agreement between the Caiazzos and Fernandes, the Caiazzos owed Fernandes a duty to maintain the boiler, and that Meenan created a duty of care because its negligent service and maintenance of the heating equipment/boiler launched a force of instrument of harm. To demonstrate Meenan's alleged negligence, Cambridge submits, among other things, Meenan's service history report and a transcript of the deposition testimony of John Caiazzo (NYSCEF Doc. Nos. 58 & 61). Cambridge asserts, among other things, that Meenan was negligent because it delayed service to the boiler, failed to identify an issue with the tank, overfilled the tank, and improperly connected the copper tubing when the tank was installed. Ultimately, Cambridge asserts that the defendants' negligence in servicing and maintaining the heating equipment was a proximate cause of the fire.

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018]).

Here, Cambridge has failed to establish its prima facie entitlement to summary judgment on the issue of liability. Apart from its own conclusory statement that the origin of the fire was within the boiler, Cambridge fails to tender evidence sufficient to demonstrate this supposed fact. Absent evidence demonstrating that the origin of the fire was within the boiler, Cambridge fails to establish that the defendants' alleged negligence in servicing and maintaining the heating equipment/boiler was a proximate cause of the fire. Given that Cambridge failed to establish its prima facie entitlement to summary judgment as to liability, its motion must be denied "regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

Motion Sequence 002

Meenan cross-moves, inter alia, for summary judgment dismissing the complaint insofar as asserted against it; to preclude Cambridge from offering evidence at the trial due to spoliation of evidence; and, in the event summary judgment is denied, permitting Meenan to depose Cambridge's two experts due to spoliation of evidence. Principally, Meenan argues that Cambridge has failed to establish the existence of a dangerous condition that was a proximate cause of the fire and submits the reports of Cambridge's experts, Belfi and Karn, as well as the affidavit of its own expert, John E. Batey, P.E., all of whom classified the cause of the fire as "undetermined" (NYSCEF Doc. Nos. 94, 97, 103).

"Generally, a contracting party does not owe a duty of care to a noncontracting third party" (*Mizenko v Intertech Digital Ent., Inc.*, 204 AD3d 1151, 1152 [3d Dept 2022]). However, there exists an exception "where the contracting party, in failing to exercise reasonable care in the performance of his [or her] duties, launches a force or instrument of harm" (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 140 [2002] [internal quotation marks omitted]). "[A]

contracting party may be found to have launched a force or instrument of harm when that party creates or exacerbates a dangerous condition” (*Mizenko v Intertech Digital Ent., Inc.*, 204 AD3d at 1152).

Here, Meenan has failed to establish its prima facie entitlement to summary judgment dismissing the complaint insofar as asserted against it. Viewing the evidence in a light most favorable to Cambridge, the expert reports do not eliminate all triable issues of fact as to whether Meenan’s alleged negligence in servicing and maintaining the heating equipment/boiler created a dangerous condition that was a proximate cause of the fire. In support of its motion, Meenan submitted, among other things, the reports of Cambridge’s experts, Belfi and Karn, and of its own expert, Batey. While Belfi and Batey opine that the fire was not caused by the oil boiler/burner, or by an oil leak, Karn opines that the fire did originate at the oil boiler/burner (*compare* NYSCEF Doc. Nos. 97 & 103, *with* NYSCEF Doc. No. 94). Karn further states that because he and Belfi disagreed, the cause of the fire could not be substantiated and had to be classified as “undetermined” (NYSCEF Doc. No. 94). The conflicting opinions of Cambridge’s expert witnesses precludes summary judgment as a determination of credibility is an issue for the trier of fact (*see e.g. Ferguson v Shu Hum Lam*, 59 AD3d 388 [2d Dept 2009]; *Shields v Baktidy*, 11 AD3d 671 [2d Dept 2004]). Given that Meenan failed establish its prima facie entitlement to summary judgment dismissing the complaint insofar as asserted against it, this branch of its motion must be denied “regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).

As for the remainder of Meenan’s requested relief, Meenan argues that because the boiler was replaced prior to Meenan being put on notice of this subrogation action, Meenan was deprived of the opportunity to inspect the boiler. Consequently, Meenan argues that due to the spoliation of evidence, Cambridge should be precluded from offering evidence at trial or, alternatively, that Meenan should be permitted to depose Cambridge’s two experts who had the opportunity to investigate the boiler before it was replaced.

“The court has broad discretion in determining what, if any, sanction should be imposed for spoliation of evidence” (*Iannucci v Rose*, 8 AD3d 437, 438 [2d Dept 2004]). Here, the record indicates that Fernandes contracted with Meenan to remove and replace the boiler on January 21, 2021—eight months before Cambridge commenced this subrogation action—and there is nothing to indicate that at the time of its removal, Fernandes was on notice that the boiler may be needed as evidence in any future litigation (*see DiDomenico v. C & S Aeromatik Supplies, Inc.*, 252 AD2d 41 [2d Dept 1998]). Moreover, Meenan has failed to demonstrate that it is unable to prepare a defense, particularly as Batey’s affidavit is based upon photographic evidence of the boiler (*see Denoyelles v Gallagher*, 40 AD3d 1027 [2d Dept 2007]). Therefore, that branch of Meenan’s motion to preclude Cambridge from offering evidence at the trial or, alternatively, to permit Meenan to depose Cambridge’s two experts due to the spoliation of evidence is denied.

Motion Sequence 003

The Caiazzos cross-move, inter alia, for summary judgment dismissing the complaint insofar as asserted against them. The Caiazzos argue that pursuant to the lease, their duty to maintain the boiler was limited to purchasing a contract with a qualified contractor, which duty

was satisfied when they purchased a contract with Meenan. In any event, the Caiazzos argue that Cambridge failed to establish that the Caiazzos' alleged negligence was a proximate cause of the fire.

"When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations" (*Patsis v Nicolio*, 120 AD3d 1326, 1327 [2d Dept 2014]).

Here, the Caiazzos established their prima facie entitlement to summary judgment dismissing the complaint insofar as asserted against them by submitting the lease, which provides that the Caiazzos were "responsible for hot water, boiler and maintenance either by purchasing a contract from Keyspan or other qualified contractor" (NYSCEF Doc. No. 60, ¶ 22). Nevertheless, in opposition, Cambridge raised a triable issue of fact. Specifically, although the Caiazzos purchased a contract with Meenan, Cambridge refers to the affidavit/report of Meenan's expert, Batey, who opines that "[t]he tenant most likely violated the Service Agreement with Meenan" by obtaining oil from another service and/or by canceling service appointments. That the Caiazzos dispute this assertion only confirms the existence of a triable issue of fact. Therefore, that branch of the Caiazzos' motion which is for summary judgment dismissing the complaint insofar as asserted against them is denied.

Conclusion

Based on the foregoing, it is hereby

ORDERED that Cambridge's motion for summary judgment on the issue of liability (Motion Seq. 001) is **DENIED**; and it is further,

ORDERED that those branches of Meenan's motion which are for summary judgment dismissing the complaint insofar as asserted against it; to preclude Cambridge from offering evidence at trial due to spoliation of evidence; and, in the event summary judgment is denied, to permit Meenan to depose Cambridge's two experts due to spoliation of evidence (Motion Seq. 002) are **DENIED**; and it is further,

ORDERED that the branch of Meenan's motion which is for summary judgment dismissing all cross-claims insofar as asserted against it (Motion Seq. 002) is **DENIED AS ABANDONED**; and it is further,

ORDERED that the branch of the Caiazzos' motion which is for summary judgment dismissing the complaint insofar as asserted against them (Motion Seq. 003) is **DENIED**; and it is further,

ORDERED that the branch of the Caiazzos' motion which is for summary judgment dismissing all cross-claims insofar as asserted against them (Motion Seq. 003) is **DENIED AS ABANDONED**.

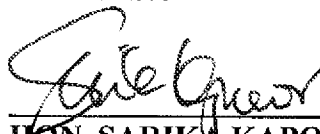
Any request for relief not addressed herein is **DENIED**.

The parties' remaining contentions have been considered and do not warrant discussion.

This shall constitute the decision and order of the court.

Dated: March 29, 2024
Mineola, New York

ENTER:



HON. SARIKA KAPOOR, A.J.S.C.

ENTERED

Apr 01 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE