Normile v DB Ins. Co., Ltd
2024 NY Slip Op 35573(U)
January 29, 2024
Supreme Court, Kings County
Docket Number: Index No. 510151/2020
Judge: Katherine A. Levine
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

CATHERINE NORMILE ,
Plaintiff,

-against-

DB INSURANCE CO., LTD
DONGBO INSURANCE CO., LTD
INTERNATIONAL UNDERWRITNG AGENCY, INC.
Defendants.

Index No.: 510151/2020

DECISION/ORDER
Hon. Katherine A. Levine

Motion Sequences 2 & 6

Plaintiff Catherine Normile ("Normile or "plaintiff") commenced a personal injury action against 305 Union Street Station ("Kittery Restaurant" or "Kittery") (*Normile v. Kittery Restaurant*, Josh Moulton and Octavio Perez, Supreme Court, Kings County, Index No. 14576/2014) ("underlying litigation"), alleging that on April 22, 2014, Octavio Perez, an employee of Kittery Restaurant, hit plaintiff upon returning to the restaurant on his bicycle from a food delivery. He was about .3 miles from the restaurant at the time of the incident. Defendant DB Insurance Co. Ltd. ("DB" or "defendant") issued a general liability insurance policy to Kittery but disclaimed coverage and refused to defend or indemnify Kittery in the underlying action because the accident did not occur at the covered location and the allegations of carelessness and recklessness did not meet the policy definition of occurrence. A judgment was entered in favor of plaintiff and against Kittery in the underlying action, which remains unsatisfied.

Currently before this court is an action to recover from DB the amount of the unsatisfied judgment. The Policy provides coverage for bodily injury caused by an "occurrence," defined as an "accident" "arising out of" the "ownership, maintenance or use of the premises shown in the Schedule, and <u>operations necessary or incidental to those premises</u>." The premises is identified in the Policy as 305 Union Street, Brooklyn, NY 11231 (LOC.: 00001 BLDG.: 00001). Defendant moved for summary judgment declaring that it does not owe coverage for plaintiff for the underlying litigation or judgment, and denying plaintiff's cross motion for summary judgment.

The courts have narrowly interpreted the terms "occurrence" and "accidental," to mean "unexpected" and "unintentional," barring recovery only when the insured intended to cause the damages. *See*, *Automobile Ins. Co. of Hartford v. Cook*, 7 N.Y.3d 131, 137-138 (2006); *Cont'l Cas. Co. v. Rapid-American Corp.*, 80 N.Y.2d 640, 649 (1993); *Dryden Mut. Ins. Co. v. Brockman*, 259 A.D.2d 947, 948 (4th Dept. 1995); *Zurich Ins. Co. v. White*, 221 A.D.2d 700, 702 (1995)."Ordinary negligence does not constitute an intention to cause damage; neither does a calculated risk amount to an expectation of damage." *Cont'l Cas. Co.*, *supra*, 80 N.Y.2d at 649. Furthermore, any ambiguity in the terms of the Policy "must be construed in favor of the insured and against the insurer." *White v. Continental Cas. Co.*, 9 N.Y.3d 264, 267 (2007). *See also, Century Sur. Co. v All In One Roofing, LLC*, 154 A.D.3d 803, 806 (2d Dept. 2017). In construing the terms of the policy narrowly and in favor of the insured, it is clear that Perez did not intend to cause any damage, and the court therefore finds that there is coverage for the allegations of carelessness which meet the policy definition of "occurrence."

The next issue is whether the bicycle incident arises from "the ownership, maintenance or use of the premises shown in the schedule and operations necessary or incidental to those premises." Plaintiff contends that when Kittery undertook, through its employee Octavio Perez, to deliver food from the restaurant such action constituted an operation incidental and necessary to the operation of the restaurant. Therefore, the policy covered any liability incurred as a result of the accident in which Perez became involved at the intersection. Defendant contends the accident did not occur at the covered location, effectively arguing that the perimeters of coverage must be viewed in territorial terms rather than in operational terms.

"When injury-causing conduct is causally related to the purposes for which the premises are used, then the injury is deemed to 'arise' from the premises." *Maroney v. New York Cent. Mut. Fire Ins. Co.*, 5 N.Y.3d 467, 472-473 (2005). *See also*, *Selis v. Town of N. Hempstead*, 213 A.D.3d 878, 880 (2d Dept. 2023) ("The phrase 'arising out of' has been interpreted to mean 'originating from, incident to, or having connection with' and requires 'only that there be some causal relationship between the injury and the risk for which coverage is provided'" *Id.*, citing *Mack-Cali Realty Corp. v NGM Ins. Co.*, 119 A.D.3d 905, 906 (2d Dept. 2014)). Thus, it is well established that coverage afforded by a premises liability policy extends to the portion of an outside sidewalk necessary for access in and out of the covered premises. *See, ZKZ Assocs. LP v. CNA Ins. Co.*, 89 N.Y.2d 990, 991 (1997) (insurer had duty to defend a garage owner for a claim arising from a fall on a sidewalk outside the garage); *Antoine v City of New York*, 56 AD3d 583, 585 (2d Dept 2008) (premises liability policy extends coverage by implication to outside sidewalk abutting covered premises).

In *McLaughlin v. Midrox Ins. Co.*, 70 A.D.3d 1463(4th Dept. 2010), the issue was whether the insured's farm owners policy applied to a claim arising from an auto accident that occurred off its premises. The plaintiff had been injured when the motor cycle he was driving collided with a pickup truck owned and driven by the insured farm owner. The insurer disclaimed coverage for the claim because the accident occurred off the insured premises. The farm owners policy provided coverage for liability for injury and damage that occurred on the insured premises, including access ways immediately adjoining the insured premises, and other land the insured used for farming purposes. The insurer contended that its policy did not provide coverage because the accident occurred on a public roadway. The court, in construing the policy in favor of the insured and resolving all ambiguities in the insured's favor, held that the various definitions of insured premises in the policy were broad enough to include public roadways used by the insured to transport workers and materials between the main farm and farms that it leased, including one that was approximately nine miles from the main farm. The court noted that the policy did not exclude public roadways from its purview.

Similar to *McLaughlin*, in this case the policy did not exclude public roadways from its purview. Furthermore, since Octavio Perez hit plaintiff with his bicycle upon returning to the restaurant from a food delivery, plaintiff's injury was causally related to the purpose for which the insured premises were being used, *i.e.,* to prepare and serve food and drinks to customers both on the premises and through delivery services. Accordingly, in construing the instant Policy in favor of the insured and resolving all ambiguities in the insured's favor, this court finds that there exists a sufficient causal connection between plaintiff's injury and the purpose for which the premises were used, such that the occurrence of the injury "arises out of" the operations necessary and incidental to the insured premises.

In light of the above, defendant's motion for summary judgment is denied and plaintiff's cross motion for summary judgment is granted. Defendant is obligated to indemnify Kittery in the underlying action. This constitutes the decision and order of the court.

DATED: January 29, 2024

Katherine A. Levine

KATHERINE A. LEVINE, J. S.C.

HON. KATHERINE A. LEVINE
JUSTICE SUPREME COURT

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