

Demari Servs. Inc. v Queens Medallion Brokerage Corp.

2025 NY Slip Op 30609(U)

February 10, 2025

Supreme Court, New York County

Docket Number: Index No. 655885/2020

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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DEMARI SERVICES INC.,THE RESIDENTIAL BOARD OF MANAGERS OF THE CENTURY CONDOMINIUM A/A/O DEMARI SERVICES INC.,THE RESIDENTIAL BOARD OF MANAGERS OF THE CENTURY CONDOMINIUM,

Plaintiff,

- v -

QUEENS MEDALLION BROKERAGE CORP., SCOTTISH AMERICAN INSURANCE GENERAL AGENCY, INC.,ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, NAVIGATORS INSURANCE COMPANY,

Defendant.

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ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

Plaintiff,

-against-

SCOTTISH AMERICAN INSURANCE GENERAL AGENCY

Defendant.

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DECISION + ORDER ON MOTION

Third-Party
Index No. 595531/2023

The following e-filed documents, listed by NYSCEF document number (Motion 008) 236, 237, 238, 239, 240, 253, 258, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 343, 344, 345, 346, 347, 365

were read on this motion to/for JUDGMENT - SUMMARY.

APPEARANCES:

Marshall Conway Bradley & Gollub, P.C., New York, NY (Dylan J. Murphy, Esq., of counsel), for plaintiffs.

Winget, Spadafora & Schwartzberg, LLP, New York, NY (Christina Marie Rieker, Esq., of counsel), for defendant Queens Medallion Brokerage Corp.

Kaufman Dolowich, LLC, White Plains, NY (Howard S. Kronberg, Esq., of counsel), for defendant Scottish American Insurance General Agency, Inc.

Zimring Brouk PLLC, New York, NY (Joshua C. Zimring Esq., of counsel), for defendant Endurance American Specialty Insurance Company.

Gimigliano Mauriello & Maloney, P.A., Morristown, NJ (Steven V. Gimigliano, Esq., of counsel), for defendant Navigators Insurance Company.

EMILY MORALES-MINERVA, J.S.C.:

In this action for damages related to the denial of excess insurance coverage in the underlying labor law and negligence action, Guerra v Century Apts. Assoc., Queens County, Supreme Court (Index No. 702047/2018), defendant SCOTTISH AMERICAN INSURANCE GENERAL AGENCY (Scottish American), moves, by notice of motion (sequence number 008), on behalf of defendant ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY (Endurance), pursuant to CPLR 3212, for an order of summary judgment, dismissing all of plaintiffs' causes of action against defendant Endurance.

Plaintiff DEMARI SERVICES INC. (Demari) appears and submits written opposition to the motion. Defendant Endurance appears and submits an affirmation in partial support of and partial opposition to defendant Scottish's motion.

For the reasons that follow, the motion (seq. no. 008) is denied in its entirety.

In seeking to file the instant motion on behalf of defendant Endurance, Scottish relies on the language of CPLR 3212 (a). However, this reliance is misplaced. CPLR 3212 (a) provides:

"Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown"

(emphasis added).

Scottish presents absolutely no case law or other authority for the court to interpret the language "any party may move for summary judgment in any action" to mean "any party may move for summary judgment *on behalf of other parties* in any action." Indeed, such a reading of rule 3212 (a) of the CPLR appears contrary to basic statutory construction (see generally NY Statutes § 94 ["The legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction"]); see also Editor's Notes, McKinneys Cons Laws of

NY, Book of Statutes, § 94 ["Words will not be expanded so as to enlarge their meaning to something which the Legislature could easily have expressed but did not" (emphasis added)]).

Further, Scottish's reading of CPLR 3212 (a) to permit it to file a motion for summary judgment on behalf of an adversary who is represented by counsel fails to avoid broad potential for absurdity which is not to be attributed to the Legislature (see NY Statutes § 145 ["A construction which would make a statute absurd will be rejected"]). The Rules of Professional Conduct are clear that "a lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued" (see Rules of Prof Conduct [22 NYCRR 1200.0] rules 1.2).¹ It is Endurance's "attorney [that] has the responsibility to 'investigate and prepare every phase' of their] client's case" (see Rosenstrauss v Jacobs & Jacobs, 56 AD3d 453 [2d Dept 2008] [discussing the attorney-client relationship in the

¹ See also Rules of Prof Conduct [22 NYCRR 1200.0] Rule 1.4, governing communication between attorney and client, providing:

"(a) A lawyer shall: (1) promptly inform the client of:(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;(ii) any information required by court rule or other law to be communicated to a client; and(iii) material developments in the matter including settlement or plea offers.(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;(3) keep the client reasonably informed about the status of the matter;(4) promptly comply with a client's reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.

"(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

context of a malpractice action)). And, here, there is no established attorney-client relationship between Endurance and Scottish's counsel. Therefore, the court will dismiss Scottish's motion, which the court notes Endurance opposes to a partial extent.

In any event, Scottish's motion (seq. no. 008) on behalf of Endurance is premature as discovery remains incomplete and note of issue has not been filed (see Jeffrey v DeJesus, 116 AD3d 574, 575 [1st Dept 2014][finding that motion for summary judgment was properly denied as premature as limited discovery had been conducted]; see also Curry v Hundreds of Hats, Inc., 146 AD3d 593, 594 [1st Dept 2017]). Despite this case having been filed in 2020, depositions, not the least of which, remain outstanding (see Bey v Rosado, 192 AD3d 575 [1st Dept 2021] [finding that summary judgment motion was premature given defendants did not have the opportunity to depose plaintiff]).

Accordingly, it is

ORDERED that motion (sequence no. 008) of defendant SCOTTISH AMERICAN INSURANCE GENERAL AGENCY is denied entirely; and it is further

ORDERED that this matter is scheduled for a virtual Status Conference on April 21, 2025 at 12:00 P.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/10/2005
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: