

Wesco Ins. Co. v State Natl. Ins. Co., Inc.

2025 NY Slip Op 34857(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 659204/2024

Judge: Leslie A. Stroth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

WESCO INSURANCE COMPANY

Plaintiff,

- v -

STATE NATIONAL INSURANCE COMPANY, INC.,

Defendant.

-----X

INDEX NO. 659204/2024

MOTION DATE 02/13/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

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

This declaratory judgment action arises from an insurance coverage dispute between plaintiff Wesco Insurance Company ("Wesco") and State National Insurance Company, Inc. ("State National") regarding coverage for 116 Development Equities LLC ("116 Development") in the action captioned Nelly Urena Garcia v. Blvd Bistro 116th Street LLC, et al., Supreme Court of the State of New York New York County, Index No. 150036/2023 (the "Underlying Action"). Wesco moves for summary judgment pursuant CPLR 3212, seeking an order (1) declaring that State National has a duty to defend and indemnify 116 Development as an additional insured under its policy, (2) declaring that 116 Development's coverage under the State National policy is primary to its coverage under the Wesco policy with respect to the Underlying Action, (3) declaring that State National must reimburse Wesco for all reasonable costs Wesco has incurred defending and indemnifying 116 Development in the Underlying Action, and (4) setting this matter down for a hearing on the amount that Wesco is entitled to recover from State National for defense and indemnification costs. State National opposes the motion on the grounds that 116 Development is not an additional insured under State National's policy. Alternatively, State

National argues that there is an issue of fact as to whether the injuries in the Underlying Action arose out of the ownership, maintenance or use of the sidewalk.

FACTUAL BACKGROUND

A. The Underlying Action

The Underlying Action involves an alleged accident that occurred on or about September 18, 2022, on a sidewalk outside of a building located at 2149 Frederick Douglass Boulevard, New York, New York 10026 (the “Premises”) (NYSCEF Doc. No. 11). The Underlying Action names Blvd Bistro 116th Street, LLC (“Blvd Bistro 116”), 116 Development, and K&R Realty Management as defendants.

B. The Premises

116 Development leased the Premises to Streetbird Harlem LLC (“Streetbird”) on June 20, 2014 (the “Lease”) (NYSCEF Doc. No. 22). Streetbird later assigned the Lease to Blvd Bistro 116 on June 20, 2018. The Lease required Blvd Bistro 116 to obtain commercial general liability insurance and to name the landlord, 116 Development, as an additional insured.

C. The State National Policy

State National issued a commercial liability policy to “Markisha Swepson, Blvd Bistro of Harlem LLC dba Blvd Bistro of Harlem” (“Blvd Bistro Harlem”), with an address of 2149 Frederick Douglass Blvd, New York, New York 10026, for the policy period from September 14, 2022 to September 14, 2023 (the “State National Policy”) (NYSCEF Doc. No. 24). Pursuant to the Blanket Additional Insured Endorsement, the State National Policy provided additional insured status to “[a]ny person or organization from whom you lease premises when you and such person or organization have agreed in writing in a contract or agreement that such person or organization

be added as an additional insured on your policy” (*Id.* at 55). The term “you” refers to the Named Insured in the State National Policy (*Id.* at 20).

D. The Tender

On February 2, 2023, Wesco tendered defense and indemnity for 116 Development in the Underlying Action to State National (NYSCEF Doc. No. 25). On June 30, 2023, State National denied the tender, stating that “[a]t this time there is not enough information . . . to accept the tender” (NYSCEF Doc. No. 26).

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent’s claims and no disputed issues of fact, the opponent, in turn, is required to “lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest” (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*see Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]). “Since [summary judgment] deprives the litigant of his day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues.” (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

DISCUSSION

As an initial matter, State National asserts that Wesco’s motion for summary judgment must be denied because it did not attach all of the pleadings to its motion, as is required by CPLR

3212(b). However, CPLR 2214(c) provides that, in an e-filed case, “a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.” Therefore, Wesco’s motion complies with CPLR 3212(b).

Turning to the merits of the motion, Wesco asserts that State National Policy has a duty to defend and indemnify 116 Development because the State National Policy covers 116 Development as an additional insured. In support of this argument, Wesco notes that the State National Policy provides additional insured status to “[a]ny person or organization from whom you lease premises when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy” (NYSCEF Doc. No. 24 at 55). Wesco argues that the term “you” in this provision refers to Blvd Bistro 116, and the Lease requires that Blvd Bistro 116 obtain insurance and name 116 Development as an additional insured. Therefore, 116 Development qualifies as an additional insured under the State National Policy.

In opposition, State National asserts that Wesco’s motion must be denied because the term “you” refers to the Named Insured on the State National Policy, who is “Markisha Swepson, Blvd Bistro of Harlem LLC dba Blvd Bistro of Harlem,” not Blvd Bistro 116. As the Lease is between 116 Development and Blvd Bistro 116, 116 Development does not have any contract with the Named Insured on the State National Policy and therefore cannot qualify as an additional insured.

In response, and for the first time on reply, Wesco asserts that the State National Policy should be read to include Blvd Bistro 116 as a Named Insured because the parties intended that the State National Policy cover the entity that leased the Premises, which is Blvd Bistro 116.

“An insurance policy is a contract between the insurer and the insured. Thus, the extent of coverage . . . is controlled by the relevant terms of the policy” (*Bond Lend Lease LMB, Inc. v Great Am. Ins. Co.*, 53 AD3d 140, 145 [1st Dept 2008]). “In determining a dispute over insurance coverage, we first look to the language of the policy” (*Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire & Marine Ins. Co.*, 31 NY3d 131, 135 [2018]). “As with the construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning” (*Id.*). “[A] contract is not ambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion” (*In re Viking Pump, Inc.*, 27 NY3d 244 [2016]).

Here, the State National Policy Declarations clearly lists the Named Insured as “Markisha Swepson, Blvd Bistro of Harlem LLC DbA Blvd Bistro of Harlem.” Additionally, the State National Policy states that “[n]o person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations” (NYSCEF Doc. No. 24 at 29). Therefore, the language of State National Policy unambiguously demonstrates that Blvd Bistro 116 is not an insured because it is not listed as a Named Insured in the Declarations (*see East End Funeral Home, Inc. v American European Ins. Co.*, 2020 WL 1467321, at *3 [SDNY Mar. 26, 2020]; *Gilbane Bldg. Co.*, 31 NY3d at 135-37).

To the extent that Wesco seeks reformation of the State National Policy to include Blvd Bistro 116 as a named insured, no such claim was asserted in Wesco’s complaint and Wesco only raised the argument for the first time on reply (*Azzopardi v American Blower Corp.*, 192 AD2d 453 [1st Dept 1993] [“Indeed, the court should never even have considered arguments making

their initial appearance in reply papers”)). In fact, Wesco’s complaint and moving papers assert that the State National Policy was issued to Blvd Bistro 116, despite the clear language in the State National Policy which provided that the Named Insured was “Markisha Swepson, Blvd Bistro of Harlem LLC Dba Blvd Bistro of Harlem.”

Moreover, the cases cited by Wesco, where courts have reinterpreted policies without a reformation claim, are inapposite to the instant action as they involve changes to minor, typographical errors (*see 82-90 Broadway Realty Corp. v New York Supermarket, Inc.*, 154 AD3d 797, 799 [2nd Dept 2017] [finding that the date of the lease in a guaranty should have read “January 15, 2000” rather than “January 15, 2001”]; *Hickman v Saunders*, 228 AD2d 559 [2nd Dept 1996] [substituting the word “on” for the word “or” in paragraph 17 of a contract]). As such, the Court declines to read the State National Policy to include Blvd Bistro 116 as a Named Insured and finds that 116 Development is not covered as an additional insured under the State National Policy.

As this is a motion for summary judgment, CPLR 3212(b) states, in pertinent part, that “[i]f it shall appear that any party other than the moving party is entitled to summary judgment, the court may grant such judgment without the necessity of a cross-motion.” Having searched the record and based on the foregoing, summary judgment is granted in favor of State National.

Accordingly, it is hereby

ORDERED that plaintiff Wesco’s motion for summary judgment (Motion Sequence No. 001) is denied; and it is further

ORDERED that after searching the record, summary judgment is granted to defendant State National and the complaint is dismissed in its entirety; and it is further

ADJUDGED AND DECLARED that defendant State National has no duty to defend and indemnify 116 Development in the Underlying Action, captioned *Nelly Urena Garcia v. Blvd*

Bistro 116th Street LLC, et al., Supreme Court of the State of New York New York County, Index

No. 150036/2023.

The forgoing constitutes the decision and order of the Court.

12/11/2025
DATE



LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE