

Mountain Val. Indem. Co. v Garone
2025 NY Slip Op 35340(U)
February 26, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 624083/2023
Judge: Paul M. Hensley
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**SUPREME COURT- STATE OF NEW YORK
PART 70, SUFFOLK COUNTY**

**PRESENT:
HON. PAUL M. HENSLEY, JSC**

MOUNTAIN VALLEY INDEMNITY
COMPANY,

Index No. 624083/2023
Motion Date: 1/15/2025
Submit Date: 2/25/2025

Plaintiff,

-against-

Motion Seq.: 001-MG

RUTH GARONE,

ATTORNEY FOR PLAINTIFF:
Mead, Hecht, Conklin & Gallagher, LLP
George P. Epstein, Esq.
1025 Westchester Ave., Suite 220
White Plains, NY 10604

ERIN CUNNINGHAM,

PATRICE FLEECE,

TAYLOR GARONE,

ATTORNEY FOR DEFENDANTS:
Trantolo & Trantolo, LLC
Daniel W. Aiello, Esq.
209 W. Main St.
Riverhead, NY 11901

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendants.

Goldberg Segalla
Kevin P. Sullivan, Esq.
1 Riverfront Plz., Suite 1010
Neward, NJ 07102

Ruth Garone
Pro Se
5829 Waterloo Bridge Circle
Haymarket, VA 20169

Patrice Fleece
Pro Se
55 Mowbray St.
Patchogue, NY 11772

Taylor Garone
Pro Se
904 Starboard Ln.
Patchogue, NY 11772

Upon the following papers read on plaintiff Mountain Valley Indemnity Company's motion for summary judgment in its favor: NYSCEF documents 1 thru 43; it is hereby

ORDERED plaintiff's application for an order declaring summary judgment against defendants Erin Cunningham and Liberty Mutual Insurance Company is granted; and it is

ORDERED that defendant Liberty Mutual Insurance Company's counterclaim is dismissed, without opposition by Liberty Mutual Insurance Company; and it is

ORDERED that plaintiff's application for a default judgment against Ruth Garone, Patrice Fleece and Taylor Garone declaring that plaintiff Mountain View Indemnity Company has no duty to defend or indemnify Ruth Garone, Patrice Fleece, and Taylor Garone in a personal injury action entitled *Erin Cunningham, plaintiff v Ruth Garone, Taylor Garone, Patrice Fleece and the Garone Revocable Trust*, pending in Suffolk County Supreme Court under Index Number 621577/2023 is granted.

On July 19, 2022, defendant Erin Cunningham alleged that she was injured as a result of a dog bite that occurred at 55 Mowbray Street, Patchogue, New York 11772. The property is owned by defendant Ruth Garone, who allegedly resides in Virginia. Ruth Garone rented the subject property to defendant Patrice Fleece and defendant Taylor Garone also resided at the subject property. Defendant Ruth Garone was insured by plaintiff Mountain Valley Indemnity Company. Plaintiff denied coverage to its insured Ruth Garone as she was not a "resident" of the subject property at the time of the loss. Defendant Patrice Fleece maintained a renter's insurance policy with defendant Liberty Mutual Insurance Company. Taylor Garone, who is also covered by the Liberty Mutual Insurance Company policy, was the owner of the dog.

On August 26, 2022, defendant Erin Cunningham retained counsel, and notified plaintiff of her claim against Ruth Garone. That letter was received September 1, 2022, and on September 7, 2022, plaintiff requested additional information from Erin Cunningham. After investigation, plaintiff denied coverage to Ruth Garone in a letter dated November 4, 2022. Plaintiff, Mountain Valley Indemnity Company maintains that because Ruth Garone was not a "resident" of the subject property on the date of the dog bite that the incident is not covered by their policy.

On August 29, 2023, Erin Cunningham, now as a plaintiff, commenced an action under Suffolk County Index Number 621577/2023 entitled, *Erin Cunningham v Ruth Garone, Taylor Garone, Patrice Fleece, and the Garone Revocable Trust*. Issue has been joined, but no request for judicial intervention has been filed.

On September 27, 2023, plaintiff commenced this action, seeking an order that it has no duty to defend or indemnify any party in the dog bite action. Ruth Garone was personally served on November 10, 2023. Patrice Fleece was personally served on November 11, 2023. Taylor Garone was personally served on November 11, 2023. Erin Cunningham was served on November 10, 2023. Liberty Mutual Insurance Company was served on November 9, 2023. Erin Cunningham answered on December 22, 2023. Liberty Mutual Insurance Company answered and counterclaimed on February 14, 2024. Plaintiff replied to the counterclaim on March 7, 2024.

Plaintiff now moves for a default judgment against Ruth Garone, Patrice Fleece, and Taylor Garone. In support of the motion, plaintiff submits, among other things, the pleadings, an

affirmation of counsel, an affidavit of claims adjuster Michael Fuller, the insurance policy, and a memorandum of law. Ruth Garone, Patrice Fleece, Taylor Garone, and Liberty Mutual Insurance Company do not oppose the motion. Only plaintiff in the related dog bite case, Erin Cunningham, opposes the motion and submits an affidavit of counsel in opposition and a memorandum of law. While the opposition is untimely, as plaintiff has replied, the Court will consider the submitted papers.

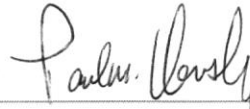
“On a motion for leave to enter a default judgment pursuant to CPLR 3215, a plaintiff is required to submit proof of service of the summons and complaint, the facts constituting the cause of action, and the defendant’s default in answering or appearing” (*Curra v Brunswick Hosp. Ctr., Inc.*, 161 AD3d 1042, 1043, 78 NYS3d 204, 205 [2d Dept 2018]). Here, defendants Ruth Garone, Patrice Fleece, and Taylor Garone defaulted on this declaratory judgment action. Plaintiff has established through the affidavit of Michael Fuller that the alleged dog bite was not a covered event because Taylor Garone and her mother, Patrice Fleece, were not members of Ruth Garone’s household. Moreover, the policy excludes coverage as the claim arose out of rental of the subject property. Accordingly, this branch of plaintiff’s motion is granted.

As to Liberty Mutual Insurance Company and Erin Cunningham, plaintiff moves for summary judgment. The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). As the court’s function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, evidence must be viewed in the light most favorable to the nonmoving party (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]).

Here, plaintiff has established its prima facie entitlement to summary judgment against Erin Cunningham and a declaration that the counterclaim of Liberty Mutual Insurance Company should be dismissed as plaintiff Mountain Valley Indemnity Company owes no duty to Ruth Garone, Patrice Taylor or Taylor Garone to provide coverage or indemnify them for the July 19, 2022, alleged dog bite. In opposition to the motion, Erin Cunningham offers no admissible evidence. When a respondent fails to oppose matters advanced on a motion, the facts alleged in the moving papers may be deemed admitted by the Court (*Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 369 NYS2d 667 [1975]; *Madeline D’Anthony Enter., Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]; *Argent Mtge. Co, LLC v Montesana*, 79 AD3d 1079,

915 NTS2d 591 [2nd Dept 2010]). By failing to answer or oppose the motion, Ruth Garone, Taylor Garone, and Patrice Fleece have admitted all the allegations contained in plaintiff's complaint. Liberty Mutual Insurance Company also fails to oppose the motion herein. Accordingly, as the complaint alleges that Ruth Garone resided in Virginia on the date of the dog bite, she admits she was not a resident of the subject property at that time. Moreover, Patrice Fleece admits rental of the property from Ruth Garone, and Taylor Garone admits that the dog bite was a direct consequence of rental of the subject property. Accordingly, plaintiff's application is granted in all respects.

ENTER:



Date: February 26, 2025
Riverhead, New York

Hon. Paul M. Hensley
Justice of the Supreme Court