Next Stop 2006 Inc. v Fabricant & Fabricant, Inc.
2025 NY Slip Op 35443(U)
January 10, 2025
Supreme Court, Nassau County
Docket Number: Index No. 612274/22
Judge: Randy Sue Marber

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 2

____X

NEXT STOP 2006 INC., CHAIM LITTMAN and CAROLINA LITTMAN,

Plaintiffs,

-against-

FABRICANT & FABRICANT, INC. and KENNETH FABRICANT,

Defendants.

____X

Index No.: 612274/22
Motion Sequence…02
Motion Date…9/20/24
XXX

Papers Submitted:
Notice of Motion....................................x
Memo of Law in Support………………..x
Affirmation in Opposition……………….x
Memo of Law in Opposition…………….x
Reply Memo of Law..…………………..x

Upon the foregoing papers, the motion by the Defendants, FABRICANT & FABRICANT, INC. and KENNETH FABRICANT ("Fabricant"), pursuant to CPLR §3212, granting summary judgment in their favor, is determined as provided herein.

The Plaintiff, NEXT STOP 2006 INC. (hereinafter "Next Stop"), sells, purchases, transports and installs office furniture in Fair Lawn, New Jersey. The Defendant, Fabricant, is an insurance broker which procured a package insurance policy for the plaintiff which included a $100,000.00 employment practices liability ("EPL") policy covering the period October 14, 2021 to October 14, 2022. On April 27, 2022, twenty-one (21) of the Plaintiff's employees commenced an action (*Morales, et.al. v. Next Stop, Inc., et.al.*, Case No. 1:11-cv-03311-[JGK]) against it in the United States District Court, Southern District, asserting minimum wage and overtime violations under the Fair Labor Standards Act ("FLSA") and New York Labor Law. On July 29, 2022, the Plaintiff's insurer, Sentinel Insurance Co., Ltd., partially denied its claim based upon an exclusion for wage and hour violations (*See* Plaintiffs' Exhibit "2", Disclaimer Letter).

On September 15, 2022, the Plaintiffs filed the within action for breach of contract and negligence. In sum, the complaint alleges that the Defendants failed to "obtain, secure, and/or procure proper, adequate, necessary, essential and appropriate insurance coverages based on the specific needs of the plaintiffs' business" (Complaint at ¶ 37). On June 29, 2023, the Defendants' motion (Seq. 01) pursuant to CPLR 3211(a)(7), to dismiss the complaint was denied and ultimately, following joinder of issue and the completion of disclosure, the case was certified for trial on February 21, 2024 and a note of issue (jury) was filed on May 13, 2024. The $100,000.00 available limits of the EPL policy were exhausted on August 7, 2023 (*See* Defendants' Exhibit "I", Affidavit of Lisa J. Kandel, dated 7/11/24).

An insurance broker has a common law duty to obtain requested coverage for a client within a reasonable amount of time, or to inform the client of the inability to do so (*See, Broecker v. Conklin Prop., LLC*, 189 AD3d 751, 752 [2d Dept. 2020]). "Generally, 'to set forth a case for negligence or breach of contract against an insurance broker, a plaintiff must establish that a specific request was made to the broker for the coverage that was not provided in the policy'" (*Copacabana Realty, LLC v. A.J. Benet, Inc.*, 199 AD3d

633, 634 [2d Dept. 2021], quoting *Joseph v. Interboro Ins. Co.*, 144 AD3d 1105, 1108 [2d Dept. 2016]). "Thus, the duty is defined by the nature of the client's request" (*Copacabana, supra* at 752; *see, Murphy v. Kahn*, 90 NY2d 266, 270 [1970]). However, "[w]here a special relationship develops between broker and client…the broker may be liable, even in the absence of a specific request, for failing to advise or direct the client to obtain additional coverage" (*Voss v. Netherlands Ins. Co.*, 22 NY3d 728, 735 [2014]). "The Court of Appeals has identified three 'exceptional situations' which may give rise to such a special relationship: (1) the agent receives compensation for consultation apart from payment of the premiums; (2) there was some interaction regarding a question of coverage, with the insured relying on the expertise of the agent; or (3) there is a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specifically relied on" (*AB Oil Services, Ltd. V. TCE Ins. Services, Inc.*, 188 AD3d 624 [2d Dept. 2020], quoting *Voss*, *supra* at 735).

Here, the Defendants have established, prima facie, by submission of admissible evidence, that the Plaintiffs did not make a specific request for wage and hour coverage. Indeed, during the deposition of the Plaintiff, CHAIM LITTMAN, he acknowledged that he "didn't know about the wage and hour[ly]…" coverage (*See* Defendants' Exhibit "B" at p. 14). In opposition, the Plaintiffs have failed to demonstrate the existence of a triable issue of fact. Moreover, the Plaintiffs did not "offer any evidence which would suffice to distinguish its relationship with the [Defendants] from the typical broker-customer relationship" (*Moutafis Motors, Ltd. v. MRW Group, Inc.*, 144 AD3d 1000, 1002 [2d Dept. 2016]).

Accordingly, it is hereby

ORDERED, that the Defendants' motion seeking an Order pursuant to CPLR §3212, granting summary judgment in their favor, is **GRANTED**, and the complaint is hereby **DISMISSED**.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
January 10, 2025

Randy Sue Marber

Hon. Randy Sue Marber, J.S.C.
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ENTERED
Jan 21 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE