Rivera v Columbia Hicks Assoc. LLC
2025 NY Slip Op 35633(U)
January 4, 2025
Supreme Court, Bronx County
Docket Number: Index No. 300155/2019E
Judge: Ashlee Crawford
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 21

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ANDRES RIVERA,

Plaintiff(s),

-against-

COLUMBIA HICKS ASSOCIATES LLC, et al.,

Defendant(s).

---x

and Third-Party Actions.

DECISION AND ORDER ON MOTION

Index No. 300155/2019E

Motion Seq. No. 004

ASHLEE CRAWFORD, J.:

Defendant/third-party plaintiff Columbia Hicks Associates LLC ("Hicks") moves for summary judgment as to damages to recover legal fees and expenses from defendant SDS Builders LLC ("Builders") and defendants/third-party defendants SDS Columbia LLC ("SDS") and Louis V. Greco, Jr. ("Greco"). Builders, SDS, and Greco oppose the motion by relying on their papers previously filed in opposition to motion seq. 002 (NYSCEF Doc. 100, 61-63).

Background

This action is the remaining, severed portion of a 2009 Labor Law action brought by plaintiff Andres Rivera (see NYSCEF Doc. 11 [Summons and Complaint, Rivera v Columbia Hicks Assocs. LLC, et al., Index No. 301377/2009]). As relevant to this motion, Hicks asserted contractual indemnification cross-claims/third-party claims against Builders, SDS, and Greco.

By order dated October 6, 2016, the Court (Rodriguez, J.) granted Hicks conditional judgment on its contractual indemnification claims against SDS and Greco (NYSCEF Doc. 16; see also NYSCEF Doc. 71 [3/15/22 First Dept. Order]). By order dated December 23, 2020, the Court (Suarez, J.) denied SDS and Greco's subsequent motion for summary judgment to dismiss the contractual indemnity claims asserted against them, citing the Court's 2016 ruling (NYSCEF Doc. 38 [12/23/20 Order]). The main Labor Law action was settled in private mediation for $1,000,000.00, and the contractual indemnification claims were severed (NYSCEF Doc. 17).

On appeal, the First Department affirmed this Court's December 23, 2020 order, specifically noting that "[b]y its terms, the [indemnification] provision covers both the settlement Hicks entered into with plaintiff and the costs it incurred in defense of plaintiff's action" (NYSCEF Doc. 71 [3/15/22 Order of the First. Dept.])

Legal Fees Stipulation

Despite the Court directing a hearing on the issue of legal fees (12/23/20 Order), Hicks submits a stipulation between it, SDS, Builders, and Greco to have the issue of legal fees determined on the papers (NYSCEF Doc. 89 [Legal Fees Stipulation]). Therein, the parties agree that "[t]he legal fees incurred by counsel for [Hicks] are detailed in the attached invoices, together with the certification required by CPLR 3122-a. The parties stipulate these invoices are authentic and were paid by the insurance carrier for [Hicks]" (id. at ¶ 1).

Separately, the parties raise two issues in the stipulation and on this motion. First, whether Hicks may recover legal fees and expenses it incurred in a federal declaratory judgment action brought by Indian Harbor Insurance Co. to disclaim coverage of plaintiff's employer, Knockdown Contracting, Inc., on the ground that Knockdown was not cooperating in the defense of the Labor Law action (Indian Harbor Insur. Co. v Knockdown Contracting, Inc., Dkt. No. 16-CV-4436-CBA-RER [EDNY]). Second, whether Hicks may recover legal fees and expenses incurred by its predecessor counsel in the Labor Law matter (Stipulation at ¶¶ 2-3).

Finally, the parties agreed in the stipulation that two separate settlement payments of $500,000.00 each were made to plaintiff Andres Rivera in the main action, on behalf of Hicks and Knockdown, respectively (Stipulation at ¶¶ 5-6).

Arguments

In support, Hicks contends that it made the $500,000.00 settlement payment directly to Rivera, and is entitled to indemnification for that sum. Hicks also seeks indemnification for $190,192.75 in total legal fees and expenses incurred in both the federal declaratory judgment action ($26,689.07), and in this action by current counsel ($91,204.60) and predecessor counsel ($72,299.08). Concerning the federal action, Hicks explains that plaintiff's employer, Knockdown, defaulted, and Hicks prevailed on summary judgment against the insurer; it argues that, but for its own efforts in the federal action, Hicks would have had to pay the entire $1 million settlement to Rivera, and it would have been entitled to indemnification for that entire sum.

Relying on their papers submitted in opposition to motion seq. 002 (see NYSCEF Doc. 100), SDS, Builders, and Greco argue that Hicks is not entitled to reimbursement of: (1) legal fees for the federal declaratory judgment action as Hicks' carrier did not place Hicks in a defensive posture in that case, and Hicks only speculates that its participation in the declaratory judgment action benefited SDS and Greco; (2) prior or current counsel's legal fees in the main action, as the records submitted in support lack authentication and a business record certification; (3) legal fees which were submitted after the note of issue was filed; or (4) Hicks' $500,000.00 share of the settlement, or any legal fees or costs in this action, because Hicks' insurance carrier, not Hicks, paid them.

Hicks did not submit reply papers.

Discussion

As an initial matter, Hicks' motion for summary judgment is denied as to defendant Builders, as Hicks has not established liability against that party (see NYSCEF Doc. No. 38).

A. Settlement Payment

As noted, SDS, Greco, and Builders rely on their papers filed in opposition to motion seq. 002. However, the First Department, in affirming the December 23, 2020 order, which decided motion seq. 002, rejected the arguments advanced by SDS, Greco, and Builders on that motion and, by extension, on this one.

Specifically, the First Department found that the law of the case doctrine barred SDS and Greco from seeking to dismiss the contractual indemnification claim after Hicks was previously awarded a conditional judgment thereon (Rivera v Columbia Hicks Assoc. LLC, 203 AD3d 524, 524 [1st Dept 2022]). It further noted that "[b]y its terms, the [indemnification] provision covers both the settlement that Hicks entered into with plaintiff and the costs it incurred in defense of plaintiff's action" (id. at 525). Moreover, "[w]hile Hicks funded its share of the settlement using proceeds from its own insurance carrier, the procurement of insurance by Hicks to pay the costs of its defense and liability does not diminish the separate and distinct obligation of [SDS], its contractual indemnitor" (id. [quotation marks and citations omitted]).

While the indemnification agreement covers Hick's settlement with plaintiff Rivera, Hicks has not met its burden of establishing that it, rather than its insurer, made the $500,000.00 settlement payment to plaintiff. Accordingly, summary judgment is denied as to this issue.

B. Reimbursement of Attorneys' Fees – Declaratory Judgment Action

"It is well settled in New York that a prevailing party may not recover attorneys' fees from the losing party except where authorized by statute, agreement or court rule" (U.S.

Underwriters Ins. Co. v City Club Hotel, LLC, 3 NY3d 592, 597 [2004]). However, "an insured party may recover attorneys' fees where it successfully defends against its insurer's action seeking a declaratory judgment that it has no duty to defend or indemnify its insured" (Fiduciary Ins. Co. of America v Medical Diagnostic Services, P.C., 150 AD3d 498, 498 [1st Dept 2017], citing id.). "The reasoning behind [the award of such attorney's fees] is that an insurer's duty to defend an insured extends to the defense of any action arising out of the occurrence, including a defense against an insurer's declaratory judgment action" (U.S. Underwriters Ins. Co., 3 NY3d at 597). Under this theory, a party who is not an insured may not recover attorneys' fees from the insurer (see Hertz Vehicles, LLC v Cepeda, 156 AD3d 440, 441 [1st Dept 2017]; Fiduciary Ins. Co. of America v Medical Diagnostic Services, P.C., 150 AD3d at 498-499).

Here, by contrast, Hicks does not seek to recover attorneys' fees from Knockdown's insurer under their policy; rather, it seeks to enforce the contractual indemnification clause in which SDS promised, and Greco personally guaranteed, to indemnify it "from and against any and all losses, costs, liabilities, claims, damages or expenses (including without limitation, reasonable attorneys' fees and costs) arising out of or as a result of or relating to" the construction work (NYSCEF Doc. 7 at ¶¶ 19.3[b], 19.8[a]). The Court finds that Hicks' attorneys' fees and expenses incurred in the federal declaratory judgment action fall within this provision. However, upon the present record, the Court is unable to determine the amount of any such fees Hicks may be entitled to recover.

C. Reimbursement of Attorneys' Fees – Labor Law Action

The First Department considered and rejected the argument that Hicks' insurance carrier is precluded from recovering legal fees and costs in connection with defending Hicks in the main action (Rivera, 203 AD3d at 524).

As to the legal expenses and invoices referred to in the first paragraph of the stipulation, it is unclear from a review of the stipulation and the documents attached thereto what the parties have agreed to, what sums were paid or sought to be recovered on this motion, or whether all the referenced invoices are even attached. Moreover, the submitted invoices (exhibits F, H, J, K) are uncertified and therefore constitute hearsay evidence. In seeking to forego a hearing, the parties easily could have specified their agreement or attached a summary of the invoices for the Court's ease of reference. In any event, because Hicks has not shown, through competent evidence, that it is entitled to $72,299.08 in legal fees and costs incurred by its prior counsel, or the remaining $91,204.60 in legal fees and costs incurred by its present counsel, this part of its motion is denied without prejudice.

Based upon all the foregoing, it is hereby

ORDERED that the motion by defendant/third-party plaintiff Columbia Hicks Associates LLC for summary judgment as to damages to recover attorneys' fees and expenses from defendant SDS Builders LLC is DENIED, since Hicks has not established liability against that defendant; and it is further

ORDERED that that part of the motion directed to defendants/third-party defendants SDS Columbia LLC and Louis V. Greco, Jr. is DENIED WITHOUT PREJUDICE only as it relates to the attorneys' fees and costs incurred the federal declaratory judgment action and this Labor Law action (main and severed actions); and it is further

ORDERED that the motion is DENIED in all other respects; and it is further

ORDERED that defendant/third-party plaintiff Columbia Hicks Associates LLC has leave to submit proof of damages as permitted herein, upon subsequent motion, within 60 days of entry of this order; and it is further

ORDERED that the clerk shall set this matter down for a control date on March 14, 2025 (no appearance required by the parties) .

This constitutes the decision and order of the Court.

HON. ASHLEE CRAWFORD, A.J.S.C.

Dated: Bronx, New York
January 4, 2025