

Structure Tone, Inc. v Scottsdale Ins. Co.

2026 NY Slip Op 30399(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 650859/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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STRUCTURE TONE, INC.,

Plaintiff,

INDEX NO. 650859/2023

MOTION DATE 01/21/2026

MOTION SEQ. NO. 003 004 005

- v -

SCOTTSDALE INSURANCE COMPANY, U.S. SPECIALTY
INSURANCE, STATE NATIONAL INSURANCE COMPANY,
HARLEYSVILLE WORCESTER INSURANCE COMPANY,

Defendant.

**DECISION + ORDER ON
MOTION**

CIROCCO & OZZIMO, INC., ALL-SAFE, LLC, RITE WAY
DEMOLITION, INC.

Nominal Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 128, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 271, 274, 283, 284, 295, 301, 302

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 273, 286, 297, 298, 299, 300

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 270, 272, 276, 278, 279, 280, 281, 285, 290, 291, 292, 293, 294, 296

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 003, 004 and 005 are consolidated for disposition. Plaintiff's motion (MS003) for partial summary judgment against defendants Scottsdale Insurance Company ("Scottsdale") State National Insurance Company ("State National") and Harleysville

Worcester Insurance Company (“Harleysville”) and declaring these parties have a duty to defend plaintiff in the underlying action is denied and State National’s cross-motion dismissing plaintiff’s complaint is granted. Scottsdale’s motion (MS004) for summary judgment dismissing plaintiff’s complaint is granted and Harleysville’s motion (MS005) for summary judgment is granted.

Background

This insurance dispute concerns an underlying action pending in New York County in which the plaintiffs there allege property damage arising out of a substantial construction project at their building located on Canal Street in Manhattan. The plaintiffs in the underlying case contend that the tenant, First Republic Bank, had alterations done at the property and that the contractors did such a bad job that the property had to be demolished and rebuilt at those plaintiffs’ sole cost and expense.

Plaintiff here was purportedly the general contractor for the site and contends it retained the nominal defendants, C&O, Rite-Way and All-Safe, as subcontractors to do the work at the site. Plaintiff procured an insurance policy from non-party Arch Insurance Company (“Arch”). It also emphasizes that each of the subcontractors were required to obtain their own insurance policies that named both plaintiff and the tenant (First Republic) as additional insureds. C&O got a policy from Harleysville. State National issued an insurance policy to All-Safe and Scottsdale issued a policy to Rite-Way.

Plaintiff argues that it has tendered to these three insurers on multiple occasions but that each time, its request for coverage has been denied. It argues that each of these defendants has a duty to defend plaintiff in the underlying action.

State National contends that its insured, All-Safe, is not a direct defendant in the underlying action and that the underlying plaintiffs did not assert any claims against All-Safe. It argues that All-Safe only did cross wall bracing underneath the first floor and did not engage in any of the excavation, shoring or bracing that allegedly caused the damages at issue. State National also argues that even if the policy named plaintiff as an additional insured, the issue here is faulty workmanship which would not be covered. It claims that property damage caused by occurrence, *i.e.* an accident, is required and that did not happen here.

Scottsdale argues that there is no coverage available under its policy as there was no property damage caused by an occurrence. It emphasizes, as does State National above, that faulty workmanship is not covered.

Harleysville makes similar arguments and emphasizes that the relevant insurance policies required “fortuity” in order to constitute an occurrence subject to coverage and that damage from a subcontractors’ faulty work is not covered under its policy.

Plaintiff argues that the allegations in the underlying complaint go beyond faulty work product and so coverage should exist on the part of the aforementioned insurers.

Discussion

The Court’s primary focus on this motion is whether the property damage for which plaintiff seeks coverage constitutes an occurrence under the policies and the applicable caselaw such that it falls within the prescribed set of actions entitled to coverage. In other words, the Court must assess whether the allegations in the underlying complaint implicate the policies and, therefore, the duty to defend and possibly a requirement to indemnify plaintiff.

“There is no “occurrence” under a commercial general liability policy where faulty construction only damages the insured's own work, and faulty workmanship by subcontractors

hired by the insured does not constitute covered property damage caused by an “occurrence” for purposes of coverage under commercial liability insurance policies issued to the general contractor, since the entire project is the general contractor's work” (*Natl. Union Fire Ins. Co. of Pittsburgh, PA v Turner Const. Co.*, 119 AD3d 103, 107, 986 NYS2d 74 [1st Dept 2014]). “Damage to an insured's own work or product does not constitute “property damage” caused by an “occurrence” within the meaning of the policy” (*Eurotech Const. Corp. v QBE Ins. Corp.*, 137 AD3d 605, 606, 26 NYS3d 703 [1st Dept 2016]).

Any fair reading of the underlying pleading reveals that the underlying plaintiffs seek damages arising out of the work itself (NYSCEF Doc. No. 98). The underlying plaintiffs specifically allege that the work was substandard and that “the work on the project caused damage to the property” (*id.* at 5-6). For instance, the relevant pleading alleges that “As a result of the improper excavating, underpinning, shoring, bracing and/or stabilizing, the Property became structurally unstable eventually suffering significant damage as evidenced by the second-floor cracking” (*id.* ¶ 59). That compels the Court to grant the motions and the cross-motion by the insurers to dismiss this complaint.

“New York courts have generally acknowledged that, while a commercial general liability policy does not insure for damage to the work product itself, it insures faulty workmanship in the work product which creates a legal liability by causing bodily injury or property damage to something other than the work product” (*QBE Ins. Corp. v Adjo Contr. Corp.*, 121 AD3d 1064, 1077, 997 NYS2d 425 [2d Dept 2014]). There is no allegation in the underlying complaint that the faulty work caused bodily injury or property damage to something other than the property itself. That is, the underlying case is about damages from the faulty workmanship to the subject of the construction project (the building) and so this Court is

compelled to conclude that plaintiff’s efforts to seek additional insured coverage under its subcontractor’s policy are not permitted under the applicable caselaw.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is denied; and it is further

ORDERED that defendant State National insurance Company’s cross-motion for summary judgment is granted; and it is further

ORDERED that defendant Scottsdale Insurance Company’s motion (MS004) for summary judgment is granted; and it is further

ORDERED that Harleysville Worcester Insurance Company’s motion (MS005) for summary judgment is granted; and it is further

ORDERED that plaintiff’s complaint is dismissed; and it is further

DECLARED that defendants Scottsdale Insurance Company, State National Insurance Company, and Harleysville Worcester Insurance Company have no duty to defend or indemnify Plaintiff, Structure Tone, Inc. (“STI”), or First Republic Bank (“FRB”), for the underlying action entitled *Elizabeth Canal, LLC, et al. v. Structure Tone Global Services, Inc., et al.*, Index No. 153543/2017; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of these defendants and against plaintiff along with costs and disbursements upon presentation of proper papers therefor.



1/29/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE