SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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NEW SOUTH INSURANCE COMPANY,

Plaintiff,

- v -

JIMMY PARK, WOO NAM PARK, SITAE NAM, JI SUN YUN, EUN J. CHO, CHRIS ILSOO JUN,

Defendants.

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INDEX NO. 653166/2022

MOTION DATE 02/07/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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

LOUIS L. NOCK, J.S.C.

In this insurance declaratory judgment action, plaintiff insurer seeks a declaration of no coverage for defendants in an underlying personal injury action captioned *Sitae Nam v Ji Sun Yun, et al.*, bearing Index No. 717616/2020, and pending before the Supreme Court of the State of New York, Queens County. Before the court is plaintiff's combined motion for summary judgment against defendants Jimmy Park, Woo Nam Park, and Sitae Nam pursuant to CPLR 3212, and for default judgment against defendants Ji Sun Yun, Eun J. Cho, and Chris Ilsoo Jun following their failure to answer the complaint. The motion is unopposed. Upon the foregoing documents, the motion is denied as to defendant Eun J. Cho, for failure to submit proof of service on said defendant. The motion is otherwise granted, on default and without opposition, for the reasons set forth in the moving papers (NYSCEF Doc. Nos. 22, 32-33) and the exhibits attached thereto, in which the court concurs, as summarized herein.

Plaintiff issued an automobile insurance policy to defendants Jimmy and Woo Nam Park, covering a 2012 Hyundai Sonata. As relevant here, the policy provides that an "insured" is either of the Parks, "any family member for the ownership, maintenance, or use of any auto or trailer, with the owner's permission," and "any person using [the] covered auto with [the Parks'] permission" (policy, NYSCEF Doc. No. 24 at 35, Part A - Liability Coverage, Insuring Agreement, § B [1], [2]). "Accident" is defined as "a sudden, unexpected, and unintended event arising out of the ownership, maintenance, or use of an auto that results in a claim for damages either by an insured or against an insured" (*id.* at 34, Definitions, § D).

According to the underlying complaint, defendant Sitae Nam alleges that, while driving her vehicle along Northern Boulevard near 155th Street in Queens on February 3, 2020, defendant Woo Nam Park, while operating the Hyundai covered by the policy, attempted to prevent defendant Yun from exiting her parking space (underlying complaint, NYSCEF Doc. No. 25, ¶¶ 6-10). In some unspecified way, Yun's car then hit Nam's car, causing Nam to suffer injuries (*id.*, ¶¶ 11-13). Yun appeared for a deposition in the underlying action, in which she testified that defendant Woo Nam Park struck her car while operating the Hyundai as she was parked on the side of the street (Yun EBT tr, NYSCEF Doc. No. 31 at 19-21). Yun exited her car to take pictures of any damage and of Park's license plate, at which point Park exited the Hyundai and began yelling at her for several minutes (*id.* at 22-26). He was pacing on the driver's side of Yun's car and the Hyundai (*id.* at 26). When Yun later attempted to leave, Park continued to pace in the street, obstructing Yun's view, and was standing between the rear of Yun's car and the Hyundai when Yun's car struck Nam's car in the roadway (*id.* at 30-32). Park gave a statement under oath as part of plaintiff's investigation, in which he disputed that he

struck Yun's car, or that he witnessed Yun and Nam's cars colliding in the roadway (Park transcript, NYSCEF Doc. No. 30 at 30-32).

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once a movant has met this burden, "the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial" (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). "[I]t is insufficient to merely set forth averments of factual or legal conclusions" (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014] [internal citation omitted]). Moreover, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assoc. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]). Therefore, if there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

A plaintiff that seeks entry of a default judgment for a defendant's failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant's default (CPLR 3215). "The standard of proof is not stringent amounting only to some firsthand confirmation of the facts" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). "[D]efaulters are deemed to have admitted all factual

allegations contained in the complaint and all reasonable inferences that flow from them" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Discussion

"The unambiguous provisions of an insurance policy, as with any written contract, must be afforded their plain and ordinary meaning" (*Broad St., LLC v Gulf Ins. Co.*, 37 AD3d 126, 130-31 [1st Dept 2006]). The policy should be read as a whole, and no particular words or phrases should receive undue emphasis (*Bailey v Fish & Neave*, 8 NY3d 523, 528 [2007]). Courts should give effect to every clause and word of an insurance contract (*Northville Indus. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 89 NY2d 621, 633 [1997]). An interpretation is incorrect if "some provisions are rendered meaningless" (*County of Columbia v Continental Ins. Co.*, 83 NY2d 618, 628 [1996]). It is the insured's burden to show that the provisions of a policy provide coverage (*BP A.C. Corp. v One Beacon Ins. Group*, 33 AD3d 116, 134 [1st Dept 2006]). Moreover, where the policy language offers no reasonable basis for a difference of opinion, the court should not find it ambiguous (*Breed v Insurance Co. of N.A.*, 46 NY2d 351, 355 [1978]).

The duty to defend under an insurance policy is exceedingly broad and extends beyond the limits of the duty to indemnify, covering any situation where the allegations of the complaint "suggest a reasonable possibility of coverage" (*Automobile Ins. Co. of Hartford v Cook*, 7 NY3d 131, 137 [2006] [internal quotations and citation marks omitted]). "Thus, an insurer may be

required to defend under the contract even though it may not be required to pay once the litigation has run its course" (*id.*). "If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or baseless the suit may be" (*id.* [internal quotations and citation marks omitted]). The duty remains "even though facts outside the four corners of the pleadings indicate that the claim may be meritless or not covered" (*id.* [internal quotations and citation marks omitted]).

Here, plaintiff has established prima facie entitlement to summary judgment against the Parks and Nam. The plain language of the insurance policy extends coverage only to accidents arising out of the "ownership, maintenance, or use of an auto" (policy, NYSCEF Doc. No. 24 at 34, Definitions, § D). There is a marked difference between Yun and Woo Nam Park's versions of the accident, as set forth above. However, the underlying complaint, which is the basis for the duty to defend analysis, alleges that Park prevented Yun from leaving her parking space. Yun's testimony makes clear that he did so while standing in the street and not operating the Hyundai (Yun EBT tr, NYSCEF Doc. No. 31 at 30-32). Since Park was not operating the Hyundai at the time of the accident, there is no coverage available under the policy. The Parks and Nam, by failing to oppose the motion, have failed to satisfy their burden to raise a triable issue of fact (*Kershaw*, 114 AD3d at 82).

Plaintiff is also entitled to a default judgment against defendants Yun and Chris Ilsoo Jun. Plaintiff submits affidavits of service on said defendants (NYSCEF Doc. Nos. 2-3), the affidavit of plaintiff's claims representative attesting to the facts of the case (NYSCEF Doc. No. 33), and the affirmation of its counsel Michael J. Mernin, Esq., who attests to defendants Yun and Jun's default (NYSCEF Doc. No. 22, ¶ 32). The motion is denied as to defendant Eun J. Cho, however, as plaintiff failed to submit proof of service of the complaint upon said defendant.

Accordingly, it is hereby

ORDERED that so much of the motion seeking summary judgment against defendants Jimmy Park, Woo Nam Park, and Sitae Nam is granted; and it is further

ORDERED that so much of the motion seeking a default judgment against defendant Ji Sun Yun, Eun J. Cho, and Chris Ilsoo Jun is denied as to Eun J. Cho, and otherwise granted; and it is further

ADJUDGED and DECLARED that plaintiff herein is not obliged to provide a defense to, and provide coverage for, the defendants Jimmy Park and Woo Nam Park in the action captioned *Sitae Nam v Ji Sun Yun, et al.*, bearing Index No. 717616/2020, and pending before the Supreme Court of the State of New York, Queens County; and it is further

ADJUDGED and DECLARED that defendant Sitae Nam is not entitled to coverage or indemnification under the Policy or for the claims made in the Underlying Action; and it is further

ORDERED that plaintiff shall have one bill of costs against the defendants Woo Nam Park, Jimmy Park, and Sitae Nam, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against said defendants in the amount of plaintiff's costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued as to defendant Eun J. Cho.

This constitutes the decision and order of the court.

6/27/2024
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE