

Great N. Ins. Co. v Curtis Elec., Inc.

2024 NY Slip Op 32255(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 157009/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 157009/2022

GREAT NORTHERN INSURANCE COMPANY A/S/O
ZACHARY M. HARRISON AND HEATHER HARRISON,

MOTION DATE 06/01/2024

Plaintiff,

MOTION SEQ. NO. 003

- v -

CURTIS ELECTRIC, INC., WR HOME BUILDERS,
LLC, MATTHEW ROOFING CO.

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72,
73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Defendant Matthew Roofing Co.'s ("Matthew Roofing")
motion for summary judgment dismissing Plaintiff's Complaint against is granted.

This is a subrogation action based on insurance proceeds paid for water damage to Zachary
and Heather Harrison's residence located at 4 Mamaroneck, New York (the "insured premises")
(NYSCEF Doc. 1). The water damage occurred on October 27, 2019. The front roof portico was
undergoing a renovation at the time of the water damage.

Matthew Roofing has moved for summary judgment arguing that Plaintiff's own insured,
Heather Harrison ("Mrs. Harrison") has confirmed that Matthew Roofing did not work on the front
roof portico where the water damage occurred (NYSCEF Doc. 73). Affidavits from both Mrs.
Harrison and Mieczyslaw Janusz ("Mr. Janusz") who is the sole owner of Matthew Roofing state
that Matthew Roofing had no obligation to tarp or safeguard the front entrance/portico section of
the insured premises.

According to Mrs. Harrison and Mr. Janusz, the front portico was still being framed at the time of the water damage, and therefore it was co-defendant WR Construction LLC's responsibility to prevent water infiltration. Matthew Roofing could not begin its work on the front portico until WR Construction LLC completed framing of the portico. Mr. Janusz did admit in his affidavit that "Matthew Roofing did perform some roof related work at the subject premises, but not on the front/entrance/portico area, where the loss occurred." (NYSCEF Doc. 77 at ¶ 3). In opposition, Plaintiff submits that Matthew Roofing is required to respond to its written discovery demands and party depositions and therefore the motion for summary judgment is premature. In reply, Matthew Roofing argues that Plaintiff is bound by the admissions of Mrs. Harrison and that Plaintiff has failed to show discovery needed to refute Mrs. Harrison and Mr. Janusz's testimony.

The Court finds that the uncontroverted affidavits of Mrs. Harrison and Mr. Janusz establish Matthew Roofing's prima facie burden of entitlement to summary judgment. Most notably, Mrs. Harrison, the homeowner and subrogor, admitted that Matthew Roofing did not conduct any work on the front portico at the time of the water infiltration because WR Construction LLC was still framing the portico. She admitted it was not Matthew Roofing's duty to tarp the portico. Plaintiff, despite having access to Mr. and Mrs. Harrison as insureds, failed to proffer any evidence contradicting Mr. Janusz or Mrs. Harrison's affidavits.

Although Plaintiff argues it is entitled to discovery, it fails to defeat Matthew Roofing's motion for summary judgment (*see General Elec. Business Asset Funding Corp. of Connecticut v Kazi Family, LLC*, 104 AD3d 436 [1st Dept 2013] [summary judgment not premature despite outstanding discovery requests]; *Rite Aid Corp. v Grass*, 48 AD3d 363 [1st Dept 2008] [summary judgment not premature where corporation on notice of facts from their own records]; *see also Interested Underwriters at Lloyds v HDI III Associates*, 213 AD2d 246 [1st Dept 1995] [summary

judgment not premature despite outstanding discovery requests given unlikelihood that discovery would affect outcome]). Moreover, Plaintiff fails to specify what essential facts will be uncovered by further discovery to oppose the affidavits of Mr. Janusz and Plaintiff's own insured, Mrs. Harrison (*see, e.g. Merisel Inc. v Weinstock*, 117 AD3d 459 [1st Dept 2014] [failure to specify what facts are in sole possession of movant for summary judgment fatal to opposition based on CPLR 3212[f]).

Indeed, Plaintiff's own insured has stated that Matthew Roofing conducted no work on the front roof portico and was not responsible for tarping the front roof portico. Plaintiff has failed to show what further discovery warrants denying Matthew Roofing's motion. Therefore, Matthew Roofing's motion for summary judgment is granted (*see also Rivera v City of New York*, 210 AD3d 544 [1st Dept 2022]).

Accordingly, it is hereby,

ORDERED that Defendant Matthew Roofing Co.'s motion for summary judgment dismissing Plaintiff's Complaint against is granted; and it is further

ORDERED that Plaintiff's Complaint is hereby dismissed as to Defendant Matthew Roofing Co.; and it is further

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ORDERED that within ten days of entry, counsel for Defendant Matthew Roofing Co. shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

<u>7/1/2024</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE