

MDB Dev. Corp. v State Natl. Ins. Co., Inc.

2024 NY Slip Op 32262(U)

July 2, 2024

Supreme Court, New York County

Docket Number: Index No. 451950/2022

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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MDB DEVELOPMENT CORP.

Plaintiff,

- v -

STATE NATIONAL INSURANCE COMPANY, INC.,

Defendant.

-----X

INDEX NO. 451950/2022

MOTION DATE 02/29/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

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

Upon the foregoing documents, following oral argument and for the reasons indicated below, defendant's motion for summary judgement is granted¹.

Background

This action arises from an alleged breach of contract, specifically commercial general liability insurance policy. On June 1, 2018, plaintiff, MDB Development Corp. ("MDB"), entered into an agreement with non-party Apex Skyline Construction, LLC ("Apex") whereby MDB agreed to provide labor, materials and equipment in connection with an improvement project located at 463 Livonia Avenue, Brooklyn, New York (the "Project"). Pursuant to that agreement, MDB then obtained a commercial general liability policy from defendant, State National Insurance Company, Inc. ("SNIC"), for the period running from April 29, 2020, through April 29, 2021 (the "Policy").

¹ The Court would like to thank Sophia Hartman for her assistance in this matter.

After the completion of its work, MDB was called back to the Project site, via a Change Order issued by Apex on October 12, 2020, requesting that MDB “repair of 30 Linear Feet of EIFS [(exterior insulation and finish system)] along the East Façade of the building above the gutter installed at the neighboring building.” NYSCEF Doc. No. 35. MDB accepted this additional work on the Project, and subsequently entered into a subcontract with non-party 1 JCS Construction, Corp. (“JCS”), whereby JCS agreed to perform portions of the work within MDB’s scope.

On October 21, 2020, an employee of JCS, Segundo Farez Duchitanga (“Duchitanga”), allegedly suffered injuries when he fell off a ladder while working at the Project (the “Accident”) and commenced a personal injury action against MDB and Apex, among others, in Queens County Supreme Court. *See Segundo M. Farez Duchitanga v. Apex Skyline Construction LLC et al.*, 720971/2020 (the “Underlying Suit”). MDB filed a claim with SNIC, which SNIC denied.

MDB then filed this action, claiming that SNIC, without justification or excuse, wrongfully denied MDB’s claim for defense and indemnification costs in connection with Duchitanga’s injuries under the terms of the Policy.

SNIC now moves for summary judgment, pursuant to CPLR §§ 3212 and 3001, declaring that SNIC has no obligation to defend or indemnify MDB for the Underlying Action. Specifically, SNIC argues that because Duchitanga was doing work related to the repair of EIFS, and the Policy explicitly excludes coverage of bodily injury resulting from “[a]ny work or operations with respect to any exterior component, fixture or feature of any structure if an ‘exterior insulation and finish system’ is used on any part of that structure,” SNIC properly denied coverage. NYSCEF Doc. No. 30.

Standard of Review

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Discussion

The central issue presented to this Court is whether the claims within the Underlying Action are excluded from the Policy, and more specifically, whether SNIC has met their burden in proving that there exists no issue of material fact. Defendant claims that there is no issue of material fact that exists, as the documents submitted plainly show that MDB, through their subcontractor JCS, was doing work at the Project cite for the sole purpose of repairing EIFS. Plaintiff asserts that there is an issue of material fact as it is unclear whether Duchitanga was handling EIFS materials at the time of the Accident.

There is no doubt that the Policy terms explicitly exclude coverage for any injuries "arising out of the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including removal, remodeling, service, correction or replacement of an 'exterior insulation and finish system,'" as well as for "[a]ny work or operations with respect to any exterior component, fixture or feature of any structure if an 'exterior insulation and finish system' is used on any part of that structure." While it is unclear

whether Duchitanga was handling materials directly related to the EIFS being installed, he was hired to work on a project that was specifically for the purpose of restoring EIFS, as noted by the Change Order requesting such work.

The ambiguity of what Duchitanga was doing at the time of the Accident does not overcome the fact that he was contributing to work for the sole purpose of repairing EIFS, therefore there is no issue of material fact with regards to the purpose of the work being done. *See, e.g. JMG Improvements v. Arch Specialty Ins. Co.*, 2022 WL 16700086 [S.D.N.Y. 2022] (“whether [the Claimant] was injured from “contact with” EIFS or was actively working with EIFS at the time of the injury is not dispositive, as the Policy only requires that the injury “in any way, in whole or in part, arises out of, relates to or results from” EIFS installation for the exclusion to apply. . . .The undisputed evidence demonstrates that the sole purpose of the scaffolding was to install EIFS, and what precise task [the Claimant] was performing when he was injured does not change the fact that his injury was “related to” the EIFS installation.”). Nor is there any issue of material fact that the Policy plainly bars coverage for injuries arising out of work done in relation to EIFS. Therefore, SNIC bears no obligation to defend or indemnify MDB for the Underlying Action.

Based on the foregoing, it is hereby

ORDERED that defendant, State National Insurance Company, Inc.’s motion for summary judgement is granted; and it is further

ORDERED and ADJUDGED that defendant, State National Insurance Company, Inc. has no obligation to defend or indemnify plaintiff, MDB DEVELOPMENT CORP. or any other purported insureds or additional insureds; for an action entitled Segundo M. Farez Duchitanga v.

Apex Skyline Construction LLC et. al. pending under index number 720971/2020 in the Supreme Court of the State of New York, Queens County.

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7/2/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE