SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

620
CA 13-01580
PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ.

GENERAL MOTORS, LLC, PLAINTIFF-RESPONDENT,

V MEMORANDUM AND ORDER

B.J. MUIRHEAD CO., INC., DEFENDANT-APPELLANT.

BLAIR & ROACH, LLP, TONAWANDA (DAVID L. ROACH OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAVIN, O'NEIL, RICCI, CEDRONE & DISIPIO, NEW YORK CITY (TIMOTHY J. MCHUGH OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered February 15, 2013. The order denied the motion of defendant to dismiss the complaint and granted the cross motion of plaintiff for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the cross motion is denied, the motion is granted, and the complaint is dismissed.

Memorandum: Plaintiff and defendant entered into an agreement, as set forth in a purchase order, whereby defendant would provide certain maintenance services at a plant owned and operated by plaintiff. The agreement provided that defendant "shall maintain insurance coverage with carriers acceptable to [plaintiff] and in the amounts set forth in the Special Terms," which in turn required, inter alia, that defendant obtain insurance for "liability arising from premises." The parties agree that defendant obtained insurance protecting it from the specified risks. When one of defendant's employees commenced an action against plaintiff alleging that he was injured by a dangerous condition on the premises, defendant's insurer declined to defend plaintiff on the ground that plaintiff was not a named insured or otherwise covered by the policy that the insurer issued to defendant. Plaintiff commenced this breach of contract action, contending that defendant failed to comply with the contractual requirement that it obtain insurance protecting plaintiff. Defendant appeals from an order that, inter alia, denied its motion to dismiss the complaint and granted plaintiff's cross motion for summary judgment.

We agree with defendant that the agreement does not require it to obtain insurance coverage on behalf of plaintiff, and we therefore reverse the order and dismiss the complaint. It is well settled that "a written agreement that is complete, clear and unambiguous on its face must be

enforced according to the plain meaning of its terms" (*Greenfield v Philles Records*, 98 NY2d 562, 569). Furthermore, "[i]n determining whether a[n agreement] is ambiguous, the court first must determine whether the [agreement] 'on its face is reasonably susceptible of more than one interpretation' " (*Gilpin v Oswego Bldrs., Inc.*, 87 AD3d 1396, 1397, quoting *Chimart Assoc. v Paul*, 66 NY2d 570, 573). Here, we reject plaintiff's contention that the agreement is reasonably susceptible of an interpretation requiring that defendant obtain insurance covering plaintiff. "A provision in a construction contract cannot be interpreted as requiring the procurement of additional insured coverage unless such a requirement is expressly and specifically stated. In addition, contract language that[, as here,] merely requires the purchase of insurance will not be read as also requiring that a contracting party be named as an additional insured" (*Trapani v 10 Arial Way Assoc.*, 301 AD2d 644, 647; *see Ramcharan v Beach 20th Realty, LLC*, 94 AD3d 964, 966-967; *cf. Timmons v Barrett Paving Materials, Inc.*, 83 AD3d 1473, 1477, *lv dismissed in part and denied in part* 17 NY3d 843). Contrary to plaintiff's contention, "although the insurance rider in this case required [defendant] to obtain insurance on the [premises], there was no requirement that [plaintiff] be named as an additional insured on the policy" (*Wagner v Ploch*, 85 AD3d 1547, 1548).

Entered: August 8, 2014

Frances E. Cafarell
Clerk of the Court