

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Hanover Insurance Company v. Catlin Specialty Insurance Company

Hanover Ins. Co. v. Catlin Specialty Ins. Co., 2023 NY Slip Op 03911 (App. Div. 2023) · No. 2020-06515 ·
Decided July 26, 2023

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of Hanover Insurance Company's claims against Catlin Specialty Insurance Company in a dispute over additional-insured coverage for Industria Superstudio Overseas. The court held that the construction contract unambiguously identified Fabrizio Ferri, rather than Overseas, as the contracting owner and remitted the matter for entry of a declaratory judgment that Catlin had no duty to defend or indemnify Overseas.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; Joseph J. Maltese, J.; Deborah A. Dowling, J.; Barry E. Warhit, J.
JURISDICTION	New York
DECIDED	July 26, 2023
DOCKET	2020-06515
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting Catlin Specialty Insurance Company's motion under CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against it in an action seeking a declaration of a duty to defend and indemnify.
STANDARD OF REVIEW	The court reviewed the construction contract de novo as a question of law and reviewed dismissal under CPLR 3211(a)(1) based on documentary evidence.
PRECEDENTIAL VALUE	Published opinion of the Appellate Division, Second Department; precedential under New York law, subject to revision before publication in the Official Reports.
PARTIES	Hanover Insurance Company v. Catlin Specialty Insurance Company

TOPICS

duty to defend duty to indemnify declaratory relief insurance contract interpretation motions to dismiss

PRACTICE AREAS

insurance coverage construction law contract interpretation civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the construction contract was ambiguous as to whether Industria Superstudio Overseas was a contracting party or additional insured.
2. Whether the Supreme Court properly granted Catlin's CPLR 3211(a)(1) motion to dismiss the coverage claims.
3. Whether the court should remit the matter for entry of a declaratory judgment concerning Catlin's duty to defend and indemnify Overseas.

HOLDINGS

1. The construction contract unambiguously identified Fabrizio Ferri as the sole Owner contracting with Bulson Management LLC; Industria Superstudio Overseas was not a party to the contract and the additional-insured language did not apply to it.
2. Dismissal of the complaint insofar as asserted against Catlin was proper under CPLR 3211(a)(1) because the documentary evidence conclusively established that Overseas was not entitled to the claimed coverage.
3. Catlin had no duty to defend or indemnify Industria Superstudio Overseas in the underlying personal injury action.

KEY QUOTATIONS

"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" ([*1])

"Whether or not a writing is ambiguous is a question of law to be resolved by the courts" ([*1])

"Extrinsic or parol evidence 'is admissible only if a court finds an ambiguity in the contract'" ([*1])

FACTUAL BACKGROUND

Catlin issued an insurance policy to general contractor Bulson Management LLC. The construction contract identified the contracting parties as the Owner, Fabrizio Ferri, and the Contractor, Bulson, and stated that those terms referred to a single person or entity. The contract was signed by Ferri and Bulson, did not mention Industria Superstudio Overseas, and left blank the space for identifying an Owner representative. Hanover nevertheless sought a declaration that Catlin was required to defend and indemnify Overseas in an underlying personal injury action.

PROCEDURAL HISTORY

Hanover commenced a declaratory judgment action concerning coverage for nonparty Industria Superstudio Overseas in an underlying personal injury action. Catlin moved to dismiss based on documentary evidence, arguing that Overseas was not an additional insured under Catlin's policy or the construction contract. The Supreme Court, Kings County, granted the motion, and Hanover appealed. The Appellate Division affirmed and remitted for entry of a declaration that Catlin had no duty to defend or indemnify Overseas.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remitted to the Supreme Court, Kings County, for entry of a judgment declaring that Catlin Specialty Insurance Company has no duty to defend or indemnify Industria Superstudio Overseas in Wang v. Industria Superstudio Overseas, Inc., Index No. 519101/16.

CASES CITED

- Greenfield v. Philles Records, 98 N.Y.2d 562, 569
- Donohue v. Cuomo, 38 N.Y.3d 1, 13
- W.W.W. Assoc. v. Giancontieri, 77 N.Y.2d 157, 162
- Schron v. Troutman Sanders LLP, 20 N.Y.3d 430, 436
- Goodale v. Central Suffolk Hosp., 210 A.D.3d 956, 957
- State of New York v. Home Indem. Co., 66 N.Y.2d 669, 671
- Concordia Gen. Contr. Co., Inc. v. Preferred Mut. Ins. Co., 146 A.D.3d 932, 934
- U.S. Bank, N.A. v. Faracco, 204 A.D.3d 953, 955
- Lanza v. Wagner, 11 N.Y.2d 317, 334
- Ralex Servs., Inc. v. Southwest Mar. & Gen. Ins. Co., 155 A.D.3d 800, 802

OPINION

PER CURIAM.

Hanover Ins. Co. v Catlin Specialty Ins. Co. (2023 NY Slip Op 03911) Hanover Ins. Co. v Catlin Specialty Ins. Co. 2023 NY Slip Op 03911 Decided on July 26, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on July 26, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department COLLEEN D. DUFFY, J.P. JOSEPH J. MALTESE DEBORAH A. DOWLING BARRY E. WARHIT, JJ. 2020-06515 (Index No. 520127/19) [*1]Hanover Insurance Company, appellant, vCatlin Specialty Insurance Company, respondent, et

al., defendants. Donnelly Minter & Kelly, LLC, New York, NY (Seth A. Abrams of counsel), for appellant.

Day Pitney, LLP, New York, NY (Matthew J. Shiroma and Kara A. Zarchin of counsel), for respondent. DECISION & ORDER In an action, inter alia, for a judgment declaring that the defendant Catlin Specialty Insurance Company has a duty to defend and indemnify nonparty Industria Superstudio Overseas in an underlying action entitled Wang v Industria Superstudio Overseas, Inc., pending in the Supreme Court, Kings County, under Index No. 519101/16, the plaintiff appeals from an order of the Supreme Court, Kings County (Robin K. Sheares, J.), dated July 23, 2020.

The order granted the motion of the defendant Catlin Specialty Insurance Company pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against it. ORDERED that the order is affirmed, with costs, and the matter is remitted to the Supreme Court, Kings County, for the entry of a judgment declaring that the defendant Catlin Specialty Insurance Company has no duty to defend or indemnify nonparty Industria Superstudio Overseas in an underlying action entitled Wang v Industria Superstudio Overseas, Inc., pending in the Supreme Court, Kings County, under Index No. 519101/16.

The plaintiff commenced this action, inter alia, for a judgment declaring that the defendant Catlin Specialty Insurance Company (hereinafter the defendant) was required to defend and indemnify the plaintiff's insured, nonparty Industria Superstudio Overseas (hereinafter Overseas), in an underlying personal injury action entitled Wang v Industria Superstudio Overseas, Inc., pending in the Supreme Court, Kings County, under Index No. 519101/16.

The defendant moved pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against it, arguing that Overseas was not entitled to coverage as an additional insured under an insurance policy issued by the defendant to the general contractor Bulson Management LLC (hereinafter Bulson).

The plaintiff opposed, arguing that the construction contract was ambiguous as to whether it intended to include Overseas as a party. In an order dated July 23, 2020, the Supreme Court granted the defendant's motion.

The plaintiff appeals. "[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; see Donohue v Cuomo, 38 NY3d 1, 13). "Whether or not a writing is ambiguous is a question of law to be resolved by the courts" (W.W.W. Assoc. v Giancontieri, 77 NY2d 157, 162).

"Extrinsic or parol evidence 'is admissible only if a court finds an ambiguity in the contract'" (Donohue v Cuomo, 38 NY3d at 13, quoting Schron v Troutman Sanders LLP, 20 NY3d 430, 436;

see Goodale [*2]v Central Suffolk Hosp., 210 AD3d 956, 957).

Here, the construction contract at issue provides that the parties bound by its terms are the "Owner," namely "Fabrizio Ferri," the principal of Overseas, and "the Contractor," Bulson. It later specifies, "based on the premise that legal relationships on a construction project are comprised of two-party contractual arrangements," that the terms "Owner" and "Contractor" are "singular in nature," thus referring to exactly one person or entity.

The space provided for the parties to identify a representative for the Owner was left blank. The signatories to the construction contract are "Graham R. Bruwer, Principal," on behalf of Bulson, and "Fabrizio Ferri." Overseas is not mentioned at all.

Thus, this language unambiguously identifies Ferri as the only party contracting with Bulson. The Supreme Court therefore properly construed the construction contract as between Ferri and Bulson and the additional insured language of that agreement to apply to them and not Overseas without reference to the extrinsic evidence the plaintiff offered in support of its alternative interpretation (see *State of New York v Home Indem.*

Co., 66 NY2d 669, 671; *Concordia Gen. Contr. Co., Inc. v Preferred Mut. Ins. Co.*, 146 AD3d 932, 934). Accordingly, the court properly granted the defendant's motion pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against it.

The plaintiff's remaining contention is improperly raised for the first time in a reply brief (see *U.S. Bank, N.A. v Faracco*, 204 AD3d 953, 955). Since this is, in part, a declaratory judgment action, we remit the matter to the Supreme Court, Kings County, for the entry of a judgment, inter alia, declaring that the defendant has no duty to defend or indemnify Overseas in the underlying action (see *Lanza v Wagner*, 11 NY2d 317, 334; *Ralex Servs., Inc. v Southwest Mar. & Gen.*

Ins. Co., 155 AD3d 800, 802). DUFFY, J.P., MALTESE, DOWLING and WARHIT, JJ., concur.
ENTER: Maria T. Fasulo Clerk of the Court