DOCKET NO: NNH-CV21-6116080S	SUPERIOR COURT
ASLI AKDENIZ, ADMINISTRATRIX OF ESTATE OF LEVEN OZDEMIR	J.D. OF NEW HAVEN
V.	AT NEW HAVEN
UTICA FIRST INSURANCE CO.	ARPIL 18, 2024

MEMORANDUM OF DECISION RE

UTICA FIRST INSURANCE CO.'S MOTION FOR SUMMARY JUDGMENT #123

The issue before the Court is the defendant, Utica First's, Motion for Summary Judgment (#123), Memorandum in Support (#124), Exhibits (#125), and plaintiff's Memorandum in Opposition to Motion (#139) with attached exhibits, and Defendant's Reply Memo (#141). The Motion and Opposition were argued on February 1, 2024. Defendant, Utica First Insurance, seeks summary judgment dismissing the complaint and summary judgment on its counterclaims. The Court has considered the defendant's Motion for Summary Judgment, Memorandum in Support and exhibits, the plaintiff's Memorandum in Opposition and exhibits, defendant's Reply, arguments of counsel, and the applicable law. The court overrules defendant's objection in Reply Memo #141 to the affidavit of Isa Turkman.

For the reasons set forth herein, the defendant's Motion for Summary Judgment (#123) is denied and the plaintiff's Opposition (#139) is sustained. There exist genuine issues of material fact, and defendant is not entitled to summary judgment as a matter of law. The court further denies the defendant's request in the Motion for Summary Judgment that the court

declare that Utica First has no obligation to pay plaintiff for any of the injuries or damages allegedly sustained by plaintiff as alleged in the lawsuit entitled *Levent Ozdemir v. 576 East 187th Street Corporation and Naz Gul, LLC dba U.S. Empire Pizza* (Judicial District of New Haven, docket number NnH-CV13-5034697-S).

FACTS AND PROCEDURAL HISTORY

The parties agree that the instant action arises from an insurance coverage dispute involving the prior litigation where an employee was injured on February 2, 2013 on premises of a pizzeria at property owned by 576 East 187th Street Corporation ("576 East"). Pl. Ex. A; Pl. Ex. J; Pl. Ex. K; Pl. Ex. L; Pl. Ex. M; Pl. Ex. N; Def. Ex. C. See case at docket number NNH-CV-135034697S. Plaintiff brings the instant action pursuant to C.G.S 38a-321, liability of insurer under liability policy. The pizzeria was known as U.S. Empire Pizza/Naz Gul, LLC, and the premises were located at 543 Campbell Avenue in West Haven, Connecticut. The property was owned by 576 East, which leased the premises to the pizzeria.

On February 2, 2013, plaintiff, while employed at the pizzeria, was injured when a ladder he was using to go to the basement of the pizzeria slipped and caused plaintiff's injury. Pl. Ex. A. The basement was used for supplies for the pizzeria. At the time of the incident, 576 East was insured under a general liability insurance policy by Tower National Insurance Company. Def. Ex. B-2. At the time of the incident, Naz Gul, LLC was insured under a general liability insurance policy issued by Utica First Insurance Company ("Utica First"). Def. Ex. A;

Def. Ex. B-1. A certificate of liability insurance was issued for Naz Gul (dba Empire Pizza), listing Utica First and Tower Group as insurers. Pl. Ex. O.

The lease agreement required the pizzeria (Naz Gul) to include 576 East as an additional insured on its liability policy with Utica First. Pl. Ex. A; Pl. Ex. D; Def. Ex. B-3. Pursuant to the lease, the pizzeria was required to carry at least $1,000,000 in liability coverage for claims on the premises and required that 576 East be included as an additional insured on the policy. Pl. Ex. D. Utica First was aware that an additional insured was to be named on the policy, however, no additional information was provided regarding the name of the landlord during the application process. Pl. Ex. E; Pl. Ex. G. The Utica First application letter for Naz Gul reflects at page 3, "Additional Insured – General" with a premium of $30.00. Pl. Ex. F. Utica First did not speak to anybody at Northeast about what was meant by additional insured general. Pl. Ex. R. The only information Utica First received related to an additional insured was the line on the application indicating additional insured general. Pl. Ex. S. Northeast Coverage who took the application is one of the duly authorized appointed insurance agents for Utica First. Pl. Ex. T. There exists a genuine issue of material fact whether "Additional Insured – General" is a reference to 576 East.

Naz Gul had a commercial general liability insurance policy with Utica First with a $1,000,000 limit in effect from 8/11/2012 through 8/11/2013. Def. Ex. B-1. At the time, Utica First had experience insuring similar businesses to the pizzeria. Pl. Ex. C. Naz Gul asserts that the insurance policy included 576 East; Utica First denies that 576 East was an additional

insured under the policy. Utica First ultimately declined coverage based on its claim that the policy for the pizzeria did not contain an endorsement adding 576 East as an insured. Pl. Ex. P; Pl's Ex. Q; Def. Ex. B; Def. Ex. B-4; Def. Ex. B-5; Def. Ex. B-6. Utica First also argues that if 576 East was covered by the policy, certain exclusions from coverage existed, such as work-related injuries, and whether the lease was an "incidental contract".

Plaintiff alleges in the instant action that under the terms of the lease agreement between 576 East as landlord and Naz Gul as tenant, Naz Gul was required to include 576 East as an additional insured on its policy with Utica First. Defendant, Utica First, denies that the insurance contract included 576 East as an additional insured, but admits that Utica First made efforts to obtain necessary information regarding an additional insured during the application process, but that Na Gul's insurance agent and broker failed to provide the information to add Na Gul's landlord (376 East) as an additional insured.

In the prior litigation, Utica First denied coverage for the claims alleged. Ultimately, a stipulation was reached between the plaintiff and 576 East whereby judgment entered in favor of the plaintiff in the amount of $1 million against 576 East. Plaintiff accepted payment of $500,000 in satisfaction of the judgment.[1] The stipulation was conditioned on 576 East assigning to plaintiff any claims 576 East had against Utica First for the latter's failure to

[1] After the underlying action was filed, 576 East's carrier was placed into receivership and liquidated in the State of California. As a result, the Connecticut court stayed the underlying action. Plaintiff's claim was transferred to the New York Liquidation Bureau and 576 East was notified that the coverage through the receiver was limited to $500,000. Negotiations led to plaintiff ultimately accepting an offer of $500,000 to resolve the underlying stipulation of $1 million, with certain conditions.

defend and indemnify 576 East in the 2013 lawsuit. At the crux of the dispute in the instant action is whether 576 East was an additional insured under the Utica First insurance contract, and if so, whether any exclusions apply.

Defendant's position is that 576 East was not entitled to coverage as it was neither named nor an additional insured on the Utica First policy. Plaintiff's position is that 576 East was an additional insured under the policy. Defendant counters that even if 576 East was an additional insured under the policy, coverage was precluded based on exclusions in the Utica First policy because the injury was work-related, and the policy excludes liability assumed by the insured under an "incidental contract". Therefore, another issue in this case is whether the lease was an "incidental contract" under the policy.

Genuine issues of material fact exist regarding whether 576 East was an additional insured under the policy, and if so, whether exclusions applied, and whether the lease constituted an incidental contract under the policy. Genuine issues of material fact also exist as to the second count alleging a breach of the implied covenant of good faith and fair dealing. Genuine issues of material fact also exist as to defendant's special defenses and counterclaims, including the extent of coverage, if at all, as well as issues regarding subrogation and notice. The submissions filed in support and in opposition to summary judgment demonstrate genuine issues of material fact. Defendant asserts that plaintiff's assertions are misstatements of fact and are inaccurate, while plaintiff asserts that its assertions are accurate statements of fact. Because

genuine issues of material fact are in dispute, the court denies the defendant's Motion for Summary Judgment.

DISCUSSION

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018); see also *Romprey v. Safeco Ins. Co. of America*, 310 Conn. 304, 312 (2013).

"The fundamental purpose of summary judgment is preventing unnecessary trials. . . . If a plaintiff is unable to present sufficient evidence in support of an essential element of his cause of action at trial, he cannot prevail as a matter of law. . . . To avert these types of ill-fated cases from advancing to trial, following adequate time for discovery, a plaintiff may properly be called upon at the summary judgment stage to demonstrate that he possesses sufficient counterevidence to raise a genuine issue of material fact as to any, or even all, of the essential elements of his cause of action. . . ." (Internal quotation marks omitted.) *Doe v. Board of Education of the Town of Westport, et al.*, 213 Conn. App. 22, 27 (2022). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to

disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant,* the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003).

"The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [T]ypically [d]emonstrating a genuine issue requires a showing of evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred. . . . Only if the defendant as the moving party has submitted no evidentiary proof to rebut the allegations in the complaint, or the proof submitted fails to call those allegations into question, may the plaintiff rest upon factual allegations alone. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . ." *Doe v. Board of Education of the Town of Westport, et al*., 213 Conn. App. at 28-29. "[I]n deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party." *Id*. at p. 35, citing *Ramirez v. Health Net of the Northeast,*

Inc., 285 Conn. 1, 11 (2008) and *Lasso v. Valley Tree & Landscaping, LLC*, 209 Conn. App. 584, 592 (2022).

"A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). "[T]he party moving for summary judgment . . . is required to support its motion with supporting documentation, including affidavits." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. at 324 n.12. See also *Stuart v. Freiberg*, 316 Conn. 809, 820-21 (2015). "When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue." (Internal quotation omitted.) *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 53, 213 A.3d 1110 (2019). When the moving party's documents establish no genuine issue of material fact, "[t]he existence of the genuine issue of material fact must be demonstrated by counter affidavits and concrete evidence [by the non-moving party]. . . . If the affidavits and the other supporting documents [of the non-moving party] are inadequate [to establish a genuine issue of material fact], then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof." (Internal quotation omitted.) *Rivera* v. *CR Summer Hill, Ltd. Partnership*, 170 Conn. App. 70, 74, 154 A.3d 55 (2017). "A conclusory assertion . . . does not constitute evidence sufficient to establish the existence of a disputed material fact for purposes of a motion for summary

judgment." 316 Conn. at 829, citing *Hoskins v. Titan Value Equities Group, Inc.*, 252 Conn. 789, 793-94 (2000).

Viewing the evidence in a light most favorable to the plaintiff, the court finds there exist genuine issues of material fact as to whether 576 East was an insured under the insurance contract, and if so, whether any exclusions apply. Therefore, defendant's Motion for Summary Judgment is denied.

CONCLUSION

For the reasons stated herein, the defendant's Motion for Summary Judgment (#123) is denied as to the complaint and the defendant's counterclaim, and the plaintiff's Opposition to the Motion for Summary Judgment (#139) is sustained.

Goodrow, J.

Juris Number 434439