

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED PART 43

Justice

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EDWARD WILLIAMS,
Plaintiff,

- v -

NEW YORK PROPERTY INSURANCE UNDERWRITING
ASSOCIATION, LLOYD DUNKLEY, INDIVIDUALLY AND DOING
BUSINESS AS A L DUNKLEY INSURANCE

Defendant.

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INDEX NO. 151083/2014
MOTION DATE 04/02/2018
MOTION SEQ. NO. 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that this motion is granted.

In this insurance coverage dispute, defendant New York Property Insurance Underwriting Association (New York Property Insurance) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint as against it, asserting that the policy upon which plaintiff relies had been cancelled for plaintiff's failure to make the insured premises available for inspection. In response to the motion, plaintiff argues that New York Property Insurance failed to give reasonable notice, did not diligently attempt to obtain plaintiff's cooperation, and attempted to contact plaintiff on phone numbers not associated with plaintiff.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v Hospital, 68 NY2d 320. Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not

the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact.

In or around March 2013, in accordance with the terms of the applicable insurance policy, New York Property Insurance ordered an inspection of the insured premises to be completed by its outside vendor General Information Services (GIS). GIS reported to New York Property Insurance that they were unable to conduct the inspection, which prompted New York Property Insurance to send a letter to plaintiff and its broker reciting the failure and requesting current contact information. Plaintiff and its broker were also informed of the consequences that would result if GIS was unable to conduct the inspection, i.e., cancellation of the applicable insurance policy for non-compliance with its terms. Plaintiff's broker returned the letter with the requested contact information. An attempt at a second inspection also failed. After the second failed attempt at inspection, New York Property Insurance, on July 23, 2013, sent plaintiff a cancellation notice, terminating the insurance policy, effective at 12:01am on August 28, 2013. New York Property obtained proof of mailing of the cancellation notice from United States Postal Service. In an examination before trial, plaintiff testified that he received the letter and acknowledged receipt of the premium refund check on the cancelled policy.

Defendant-movant has provided evidence showing the policy was cancelled in accordance with their plan of operation prior to the moment of plaintiff's August 28, 2013 loss. Plaintiff has failed to show in its opposition that he did not receive the cancellation notice or that the cancellation letter was received in an untimely manner. Plaintiff's appeal after the loss had already been incurred is of no consequence here, as it did not render the cancellation void. As a result of plaintiff's failure to meet his obligations under the insurance policy -- namely, to make the insured premises available for inspection upon reasonable request -- and, upon the effective

cancellation of the policy, defendant New York Property Insurance is entitled to summary judgment. Plaintiff has failed to proffer admissible evidence establishing the existence of a factual controversy necessitating a trial.

Accordingly, it is

ORDERED that defendant's motion for summary judgment against plaintiff is granted and the Clerk of the court is directed to enter judgment in favor of the defendant, New York Property Insurance Underwriting Association and against plaintiff, dismissing the complaint as against said defendant.

This constitutes the Decision and Order of the court.



ROBERT R. REED, J.S.C.

5/22/2019
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED				GRANTED IN PART		
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE