

**SUPREME COURT -- STATE OF NEW YORK
COUNTY OF NASSAU : PART 43**

LARSEN HOME IMPROVEMENT CORP.,

Plaintiff,

- against -

CNA COMMERCIAL INSURANCE and GENERAL
STAR NATIONAL INSURANCE COMPANY,

Defendant.

TRIAL / IAS PART 43

Index No. 10689/01

AMENDED

BRANDVEEN, J.S.C.

This is a declaratory judgment action brought by the plaintiff seeking to resolve if its commercial general liability insurance policy with CNA Commercial Insurance provides coverage for an accident. The plaintiff contends the defense is obligated to provide a defense and indemnify the plaintiff. CNA Commercial Insurance claims it timely disclaimed coverage after late notice by the plaintiff.

CNA Commercial Insurance issued a commercial general liability insurance policy to the plaintiff effective from May 31, 1998 through and including May 31, 1999. The policy had limits of liability of \$1 million per occurrence and a general aggregate of \$2 million. CNA Commercial Insurance received notice of the underlying accident on or about January 9, 2001. The plaintiff had a contract for renovation work at 40 Radcliff Avenue, Farmingdale, New York, a residence, and Cobra Home Improvement was the plaintiff's subcontractor retained to perform construction at the job site.

The underlying personal injury action pending in Greene County, New York involves an accident to Blake Gassaway, a Cobra Home Improvement employee. On December 21, 1998, while working at 40 Radcliff Avenue, Farmingdale, New York, a one family house, Gassaway allegedly fell from the roof causing extended hospitalization.

Gassaway subsequently sued for damages arising from common law negligence and violations of Labor Law § 200, 240.

On January 9, 2001, the plaintiff notified CNA Commercial Insurance about the accident and the lawsuit. About three months before this notice, the plaintiff was served with the summons and the complaint in Gassaway's personal injury action. On February 23, 2001, CNA Commercial Insurance disclaimed coverage by a letter to the plaintiff. Counsel for the plaintiff responded with another letter endeavoring to resolve the disclaimer alluding to Gassaway's lack of notice to the plaintiff about the accident and the lawsuit because Gassaway served the Secretary of the State of New York on October 4, 2000 who forwarded the Gassaway pleadings to the plaintiff's former counsel. The plaintiff claimed its former attorney did not forward the summons and complaint to it. On June 11, 2001, Gassaway moved for default judgment against the plaintiff. The plaintiff retained legal counsel who answered the Gassaway complaint. The default was then withdrawn. On July 10, 2001, the plaintiff commenced the instant declaratory judgment action and issue was joined on September 21, 2001. The parties, through their representatives, were subsequently deposed. The examinations before trial established James Griesmeyer, the plaintiff's president, told CNA Commercial Insurance's representative in a telephone conversation on January 11, 2001, he knew Gassaway fell from the roof and was in the hospital within a week after the accident but the subcontractor's president said he would take care of it. On January 15, 2001, Griesmeyer told another CNA Commercial Insurance's representative in a telephone conversation it was possible the subcontractor's president told him Gassaway was out with a foot injury.


The insurance policy required the plaintiff to promptly notify CNA Commercial Insurance about claims asserted against the plaintiff. The credible evidence demonstrates CNA Commercial Insurance received notice about the accident about two years after it allegedly happened. The credible evidence also shows CNA Commercial Insurance got notice of the summons and complaint three months after service of the papers. "The requirement that an insured notify its liability carrier of a potential claim 'as soon as

practicable' operates as a condition precedent to coverage" (*White by White v City of New York*, 81 NY2d 955). So, a breach of that contractual obligation voids the insurance policy (*Unigard Sec Ins Co v North Riv Ins Co*, 79 NY2d 576). Moreover, Business Corporation Law § 306 provides that a business owner is responsible for any alleged failure to receive notice where the owner neglected to inform the Secretary of State about a current address or change in the registered agent (*see, Lukrally v Durso Supermarkets, Inc*, 238 AD2d 318; *Boss v Avoxe Corporation*, 97AD2d 601). The plaintiff breached the duty to provide prompt notice to CNA Commercial Insurance, so the defendant.

Accordingly, the Court awards judgment for the defense. Submit judgment.

Dated: October 1, 2003

ENTER:



J. S. C.

ENTERED

OCT 10 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**