

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:
HON. EDWARD W. MC CARTY, III
Justice.

TRIAL/IAS, PART 3
NASSAU COUNTY

JESSICA OROL,

Plaintiff(s),

INDEX NO. 975/06

against

MOTION DATE: 10/4/06
MOT. SEQ. #001-002

RCA INSURANCE GROUP, INC. and
UNDERWRITERS AT LLOYD'S OF LONDON,

Defendant(s).

The following papers read on this motion:

- Notice of MotionX
- Notice of Cross Motion.....X
- Memorandum of Law.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Motion (#001) by plaintiff for an order pursuant to CPLR 3212 and Insurance Law 3420 directing defendants to satisfy a judgment obtained by plaintiff against defendants' insured, is denied. Cross motion(#002) by defendants for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiff's complaint, is granted.

While plaintiff was a patron at a bar known as E.J. Rockwells (hereinafter, "Rockwells") on August 18, 2000, she alleges that she suffered personal injuries at the hands of employees of Rockwells. Plaintiff commenced an action against J.D.E.S. Tavern Inc. d/b/a E.J. Rockwells in June 2001. Defendants in that action defaulted in appearing and plaintiff obtained a default judgment in the amount of \$29,072.91 entered against them on August 8, 2003.

Plaintiff then commenced an action on January 12, 2004 against defendants RCA Insurance Group, Inc. and Underwriters at Lloyd's of London, Rockwells' insurers, to obtain payment of the default judgment she had recovered against Rockwells. The insurers successfully moved for summary judgment dismissing plaintiff's complaint in that action on the ground that plaintiff failed to comply with the procedural requirements of Insurance Law Section 3420. However, in granting the insurer's motion for summary judgment dismissing plaintiff's complaint, this Court (Joseph, J.) by its order dated

November 18, 2005 stated that the dismissal was without prejudice to the commencement of a new action upon compliance with the conditions precedent.

Plaintiff thereafter commenced this declaratory action on January 18, 2006 against Rockwells' insurers seeking coverage and payment of the default judgment entered against Rockwells. Plaintiff moves for summary judgment against defendant insurers claiming she has complied with all of the conditions precedent of Insurance Law Section 3420. However, defendant insurers cross-move for summary judgment dismissing plaintiff's complaint on the ground that they did not receive timely notice of plaintiff's claim from either their insured, Rockwells, or from plaintiff, and the insurers claim that they timely and properly disclaimed when they did receive the belated notice.

Defendants have established their entitlement to summary judgment as a matter of law. Plaintiff acknowledges that Rockwells did not give timely notice of her claim to its insurers and there is no indication that plaintiff notified defendant insurers before their own insured did. Therefore, the defendant insurers' disclaimer was proper. (See, *Steinberg v. Hermitage Insurance Co.*, 26 AD3d 426.)

Plaintiff's motion for summary judgment is denied and defendants' cross motion for summary judgment is granted and plaintiff's complaint is hereby dismissed.

Date: 11-22-2006

EDWARD W. McCARTY III
J.S.C.

ENTERED

NOV 27 2006

NASSAU COUNTY
COUNTY CLERK'S OFFICE