

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

★ JUL 29 2019 ★

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UNITED STATES LIABILITY INSURANCE
COMPANY,

BROOKLYN OFFICE

Plaintiff,

-against-

NOT FOR PUBLICATION
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
No. 16-CV-3498 (CBA) (JO)

WW TRADING CO., INC., W&T SEAFOOD
CORP., WONG TUNG, LLC, and YOUYONG
LIN,

Defendants.

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AMON, United States District Judge:

BACKGROUND

United States Liability Insurance Company (“USLI”) brought this action against WW Trading Co., Inc. (“WW”), W&T Seafood Corp. (“W&T”), Wong Tung, LLC (“Wong Tung”), and Youyong Lin seeking a declaration that it was not obligated to defend or indemnify WW in connection with a lawsuit arising out of an injury sustained by Youyong Lin while working at a warehouse owned by Wong Tung. Following cross-motions for summary judgment, the sole remaining issue is whether the “Construction-Related Exclusion” in WW’s insurance policy excludes the lawsuit arising out of Youyong Lin’s injury from coverage. (See D.E. # 99 (“M&O”); D.E. # 131 (“JPTO”) at 3–4.) On May 1 and May 2, 2019, the Court held a two-day bench trial to answer this question. For the reasons stated below, the Court concludes that the lawsuit arising out of Youyong Lin’s accident does not fall within the Construction-Related Exclusion. USLI is therefore obligated to indemnify WW for liability incurred in Youyong Lin’s underlying state-court action, Lin v. W&T Seafood Corp., No. 509784/2014 (N.Y. Sup. Ct. filed Feb. 13, 2015). (See also D.E. # 92 (reflecting settlement and dismissal of that suit).)

FINDINGS OF FACT

W&T is a company in the business of wholesale seafood distribution. (JPTO at 6.) Louis Wu is the majority owner of W&T and serves as its president. (Id.) W&T's business operates out of a warehouse located at 50 Franklin Avenue, Brooklyn, NY 11205, which is owned by Wong Tung. (Id.) Louis Wu is also the majority owner of Wong Tung. (Id.) WW is a business principally owned by Han Luong which operates out of the same warehouse and which delivers seafood on behalf of W&T. (D.E. # 147-2 ("T.")¹ 132:10–22 (Louis Wu); id. 200:13–25 (Han Luong).)

In 2014, Louis Wu (as representative for W&T) hired Sheng Qiang Lin to perform a variety of tasks around the warehouse. (T. 122:24–123:1 (Louis Wu).) One task was the installation of sheetrock to make the second floor warmer. (Id. 121:10–12 (Louis Wu); id. 155:1–156:7 (same).) This installation was done in a crawlspace between the first and second floor accessed through a small door just below the ceiling of the loading dock and parking area. (Id. 145:6–146:10 (Louis Wu); id. 24:14–25:21 (Youyong Lin); D.E. # 145 ("DX") 8–9.) A second task involved scraping the rust off certain I-beams and applying an anti-rust product. (T. 115:5–13 (Louis Wu); id. 36:25–37:2 (Youyong Lin).) This work was done in an area near the warehouse's freezers, (id. 159:16–161:19 (Louis Wu); DX 17–19), in a separate part of the warehouse from where the insulation work was done, (T. 52:3–54:13 (Youyong Lin).) Louis Wu testified that the purpose of this work was to make the area look clean and to protect an area of the warehouse that often got damp from rust. (T. 116:3–20 (Louis Wu).) Louis Wu further testified credibly that the insulation work and painting and scraping work were "two different jobs." (Id. 159:5–6 (Louis Wu).)

¹ References with the designation "T." are to pages of the trial transcript.

When Louis Wu hired Sheng Qiang Lin, he spoke with him directly. (T. 122:11–14 (Louis Wu).) They agreed that Sheng Qiang Lin would be paid \$12,000 for his work, including both the insulation and the scraping and painting. (Id. 123:6–15 (Louis Wu).) Sheng Qiang Lin hired around four additional people to help him with his work, including Youyong Lin. (Id. 23:8–13 (Youyong Lin).) Youyong Lin testified that he took direction only from Sheng Qiang Lin, and was paid \$180 per day regardless of what he worked on for that day. (Id. 21:4–25 (Youyong Lin).) Sheng Qiang Lin did not tell Youyong Lin the entire scope of the work to be done at the warehouse at the beginning of their work; instead, he informed Youyong Lin of the task he would be performing at the beginning of each day. (Id. 48:23–49:1 (Youyong Lin).)

Louis Wu testified that the scraping and painting work did not commence until after the insulation work had been completed. (T. 159:2–6.) On August 26, 2014, Youyong Lin had been working on the painting and scraping project for three or four days, (id. 68:18–19), when Han Luong drove a forklift into his ladder in the freezer area of the warehouse, causing him to fall, (id. 201:12–19 (Han Luong); id. 67:11–16). The painting and scraping work was not completed subsequent to Youyong Lin’s injury, (id. 113:7–12 (Louis Wu)), but Louis Wu paid Sheng Qiang Lin the agreed upon \$12,000 because he was in need of money to pay his injured worker, (id. 163:25–164:11).

On May 1, 2015, Youyong Lin filed an amended complaint in the Supreme Court of the State of New York, County of Kings, alleging causes of action for negligence and violation of New York Labor Law §§ 200, 240(1), New York Codes, Rules and Regulations §§ 16.8, 16.9, 23-1.5(a), and Labor Law regulation 29 C.F.R. Chapter XVII § 1926.1053(b)(8), against Wong Tung, WW, and W&T (the “State Court Action”). (PX 3.) Although WW’s commercial general liability insurer—USLI—had initially disclaimed coverage and defense on September 26, 2014, (PX 2), it

agreed to defend WW by a letter dated July 23, 2015, (PX 4). On June 24, 2016, USLI filed this action seeking a declaratory judgment that it had no duty to defend or indemnify WW. On February 28, 2018, Youyong Lin settled the State Court Action with the defendants for \$1,600,000. (D.E. # 92.) This settlement was paid for by Wong Tung and W&T's insurer; their crossclaims against WW for contribution and indemnification remain. (D.E. # 94.)

CONCLUSIONS OF LAW

This Court's September 28, 2018 Memorandum and Order resolving USLI's motion for summary judgment left one narrow issue for trial: are claims arising from Youyong Lin's accident exempted from insurance coverage by the Construction-Related Exclusion to WW and USLI's general commercial liability insurance, which reads:

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury", or medical expenses arising out of any construction, "construction services", renovation or site preparations.

"Construction Services" includes, but is not limited to, surveying, drafting, test borings, or inspections.

(M&O at 31-32; PX 1.) At the time of the September M&O, the Court recognized that "[i]f [Youyong] Lin's scraping and painting was part of his larger project installing sheetrock, his activities constitute 'construction', 'construction services', 'renovation', or 'site preparations.'" (M&O at 31-32.) On the other hand, if the painting and scraping "constituted 'separate, unrelated work' from the installation and was 'routine "clean up" work,'" the Court noted that it would not likely fall under the exclusion. (Id.)

The credible testimony and evidence presented at trial made clear that Youyong Lin's work painting, scraping, and applying anti-rust was separate from the sheetrock insulation installation project. Although Sheng Qiang Lin was paid in one lump sum for all the work he performed at the warehouse, the painting and scraping work took place in a different area from the insulation

work, (T. 145:6–146-10, 159:16–161:19 (Louis Wu); id. 24:14–25:21 (Youyong Lin); compare DX 8–9, with DX 17–19), and was done for a different purpose, (T. 116:3–20 (Louis Wu) (painting and scraping was done to make area “look cleaner” and to protect damp area from rust); id. 121:10–12 (Louis Wu) (sheetrock insulation project was done to keep second floor warm)). Louis Wu further explained that the painting and scraping work did not commence until after the insulation project had been finished, (T. 159:2–6), and Youyong Lin did not learn the contours of this second project until after it had commenced, (Id. 48:23–49:1). The Court therefore concludes that the painting and scraping work Youyong Lin was doing when the accident occurred was a separate project from the insulation work he had done previously.

USLI nonetheless contends—as it did in its motion for reconsideration, (D.E. # 102-1 at 4–7)—that the painting and scraping work alone constitutes “renovation” within the meaning of the Construction-Related Exclusion. (D.E. # 147 at 11–12.) Although new information came to light during trial about the application of anti-rust during the painting and scraping project, the Court concludes, consistent with its denial of reconsideration, (D.E. dated February 6, 2019), that the painting and scraping project did not constitute excluded “renovation.” “[A]mbiguities in an insurance policy are . . . to be construed against the insurer, particularly when found in an exclusionary clause.” Ace Wire & Cable Co., Inc. v. Aetna Cas. & Sur. Co., 457 N.E.2d 761, 764 (N.Y. 1983). Further, “the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it.” Heintz v. Brown, 607 N.E.2d 799, 802 (N.Y. 1992). Here, the word “renovation” sits next to “construction,” “construction services”, and “site preparations” in the Construction-Related Exclusion. The Court concludes that “renovation” as used in the “Construction-Related Exclusion” refers to more structural changes than the work described in the testimony at trial. This conclusion is consistent with several other courts which declined to

interpret construction exclusions to include painting work. See, e.g., Kurtin v. National R.R. Passenger Corp. (Amtrak), 887 F. Supp. 676, 681 (S.D.N.Y. 1995) (“[P]ainting was not encompassed within the definition of ‘construction’ intended by the parties.”); Kreisler v. Second Ave. Diner Corp., No. 10-CV-7592 (RJS), 2012 WL 3961304, at *9 (S.D.N.Y. Sept. 11, 2012) (Sullivan, J.) (contrasting “[r]enovation and other structural changes” from “normal maintenance, reroofing, [and] painting”).

Finally, USLI presents a strained argument concerning the effect of the state-court ruling giving rise to Youyong Lin’s settlement in the State Court Action. The state court ruled that W&T Seafood and Wong Tung were liable to Youyong Lin under New York Labor Law § 240(1) for failing to furnish proper protective equipment “in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.” In its ruling, the state court abbreviated that language, referring only to the statute’s requirement to furnish equipment “in the erection, demolition, repairing, [or] altering . . . of a building or structure.” (PX 17 at 7.) USLI contends that the ellipsis should be read to embody the state court’s holding that Youyong Lin was not “painting, cleaning or pointing” when he was injured, and that therefore he must have been performing construction work within the Construction-Related Exclusion. The simple omission of this language does not constitute a holding. The precise nature of Youyong Lin’s work was not at issue in the State Court Action and the state court’s ellipses more likely embodies an effort to shorten the statutory language than a subtle, implicit holding on an issue immaterial to the disposition of the issue before it. Whether USLI’s argument is one about issue preclusion, or some other topic material to coverage, the Court does not read the state court decision to cast any doubt on the conclusions reached above.

CONCLUSION

In short, when Youyong Lin was injured, he was not performing labor that fell under the Construction-Related Exclusion. As such, USLI's request for a declaration that it has no duty to indemnify WW is denied. The Clerk of Court is directed to enter judgment accordingly.

SO ORDERED.

Dated: July 26, 2019
Brooklyn, New York

s/Carol Bagley Amon
Carol Bagley Amon
United States District Judge