To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

----------x

LATASHA MARBURY

PlaintiffS,

-against-

Index No. 59532/2011
**DECISION & ORDER**
Motion Sequence 4

CHAUCER SYNDICATES, LTD., THE CCL PARTNERSHIP, LLP, ARGENTA HOLDING, PLC., LIBERTY SYNDICATES, TALBOT UNDERWRITING LTD., AON RISK SERVICES NORTHEAST, INC., NAVIGATORS INSURANCE COMPANY, AON, LTD. and DAVID SHIMANOV,

Defendants.

----------x

CHAUCER SYNDICATES, LTD., THE CCL PARTNERSHIP, LLP, ARGENTA HOLDING, PLC., LIBERTY SYNDICATES, TALBOT UNDERWRITING LTD., AON RISK SERVICES NORTHEAST, INC., NAVIGATORS INSURANCE COMPANY

Third-Party Plaintiffs,

-against-

Index No.: 59532/2011T

DAVIT SHIMUNOV,

Third-Party Defendant.

----------x

The following papers numbered 1 through 10 were received and considered in connection with the above-captioned matter:

theJasmineBRAND.com

| PAPERS | NUMBERED |
|---|---|
| Notice of Motion/Affirmation/ Exhibits A-F | 1-8 |
| Affirmation in Opposition (Underwriting Defendants) | 9 |
| Affirmation in Response (Shimanov) | 10 |

Plaintiff moves by Notice of Motion for an Order pursuant to CPLR § 2221 granting the Plaintiff leave to re-argue this Court's Decision and Order dated June 26, 2014 which granted the summary judgment motion of Chaucer Syndicates, Ltd., The CCL Partnership, LLP, Argenta Holdings, PLC, Liberty Syndicates, Talbot Underwriting, and Navigators Insurance Company ("Underwriters") seeking to dismiss Plaintiff's First and Fourth causes of action asserted in her Second Amended Complaint against Underwriters, on the grounds that (1) the Plaintiff's alleged loss is excluded from coverage under the applicable policy of insurance and (2) the Plaintiff breached a warranty in the applicable policy.

In this action, Plaintiff seeks damages for an alleged breach of an insurance contract due to the denial of coverage for Plaintiff's alleged May 24, 2011 loss of jewelry. Plaintiff bought an insurance policy for her jewelry collection, valued at approximately $2.5 million for the period May 23, 2011 to May 22, 2012. The policy covered articles of jewelry described in a Marbury Jewelry Schedule comprising of 14 items of jewelry with an aggregate appraised value of $2,494,831.00. The policy provided coverage for any one loss of the scheduled jewelry kept within a Bank of America safe deposit box located at a specific location. The policy also provided that jewelry could be removed from the vault, but it excluded any out-of-vault loss from coverage unless the jewelry was being worn, being carried by hand under the personal



theJasmineBRAND.com

supervision of the Plaintiff, or deposited in a locked safe unless the insured is staying at a hotel or motel when such items are kept in the principal safe of the hotel or motel.

Plaintiff voluntarily consigned and transferred possession and physical control of Item 11, a ladies GIA certified fancy yellow oval diamond chandelier pair of earrings with an appraised value of $458,300.00, and Item 12, a ladies GIA certified fancy yellow pear shaped diamond pendant with an appraised value of $434,400.00, to David Shimunov ("Shimunov") a jewelry dealer who, the Plaintiff alleges, failed to return the items.

Underwriters denied coverage under the policy, based upon the out-of-vault loss exclusion. Underwriters contend that the Plaintiff did not comply with the policy warranty requiring that the Plaintiff deposit the insured jewelry in the Bank of America safe deposit box as required.

On December 6, 2011, Plaintiff filed a Summons and Complaint in Supreme Court, Westchester County against Underwriters, Aon Risk Services Northeast, Inc., and Aon Ltd.; On December 23, 2011, Plaintiff filed an Amended Summons and First Amended Complaint against Underwriters and Aon alleging breach of contract and seeking damages in the amount of $1 million, alleging tort-bad faith breach of an insurance policy and seeking damages in the amount of $2.5 million, alleging a Declaratory Action and seeking Specific Performance against all defendants, and alleging negligence against Aon Risk Services Northeast, Inc., and Aon Ltd. and seeking damages in the amount of $1 million.

On January 13, 2012, Underwriters answered Plaintiff's First Amended Complaint, denied the relevant allegations and asserted eleven affirmative defenses



theJasmineBRAND.com

and filed a cross-claim against Aon Risk Services Northeast, Inc. and Aon Ltd. for indemnity. On February 10, 2012, Underwriters also filed a Third-Party Summons and Complaint against Third Party Defendant, David Shimanov ("Shimanov")

On January 30, 2012, Aon Risk Services Northeast, Inc. answered Plaintiff's First Amended Complaint, denied the relevant allegations, asserted fifteen affirmative defenses and answered Underwriters' cross-claim.

On May 1, 2012, Plaintiff filed a Second Amended Summons and Complaint against Underwriters, Aon Risk Services Northeast, Inc., and David Shimanov alleging breach of contract and seeking damages in the amount of $1 million alleging tort-bad faith, breach of an insurance policy and seeking damages in the amount of $2.5 million, alleging a Declaratory Action and seeking Specific Performance against all defendants, and alleging negligence against Aon Risk Services Northeast, Inc., and Aon Ltd. and seeking damages in the amount of $1 million, and alleging conversion and fraud against Shimanov and seeking damages in the amount of $1 million.

On or about May 24, 2012, Underwriters served Plaintiff with an Answer to the Second Amended Summons and Complaint, which denied the relevant allegations and asserted eleven affirmative defenses and cross-claims against Aon Risk Services Northeast, Inc. for indemnity. Underwriters also served an Amended Third-Party Complaint against Shimanov.

On December 20, 2012, this Court issued a Decision and Order dismissing Plaintiff's Second Cause of Action for bad faith breach of an Insurance Policy. This Court also granted Underwriters' summary judgment motion by Decision and Order dated June 26, 2014. Plaintiff now files the instant motion seeking to reargue that



theJasmineBRAND.com

Decision and Order.

It is well settled that "[m]otions for reargument are addressed to the sound discretion of the trial court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or mistakenly arrived at its earlier decision." *Viola v. City of New York*, 13 A.D.3d 439 (2d Dept.2004); Carrillo v. PM Realty Group., 16 A.D.3d 611 (2d Dept. 2005); *McNeil v. Dixon*, 9 A.D.3d 481 (2d Dept.2004). A motion to reargue is not to afford an unsuccessful party with additional opportunities to reargue issues previously decided, or to set forth arguments which differ in substance from those originally articulated. McGill v. Goldman, 261 A.D.2d 593 (2d Dept.1999); *Woody's Lumber Co., Inc. v. Jayram Realty Corp.*, 30 A.D.3d 590 (2d Dept. 2006); *Gellert & Rodner v. Gem Cmty. Mgt.*, 20 A.D.3d 388 (2d Dept. 2005).

Plaintiff asserts that the Court overlooked or misapprehended the plain and unambiguous language of the policy and the well-settled principles of insurance coverage as they pertain to policy construction. Plaintiff contends that this Court placed undue emphasis on the Risk Details and omits the Cover section of the policy, which controls. Plaintiff contends that the Risk Details of the policy contains no language requiring that the jewelry must be kept within the Bank of America Safe Deposit Box for the primary limit to apply. Plaintiff argues that the Risk Details are part of the "placing slip", which is an outline of the terms of a proposed contract of insurance for underwriters who are interested in subscribing to a future policy to be issued through Lloyd's of London. Plaintiff asserts that there is no location limitation in the Cover



theJasmineBRAND.com

section of the policy and also uses the Lloyd's website to advance the argument.

The Risk Details provision of the Policy provides:

SUM INSURED: 1. USD 2,494,831 any one loss in respect of scheduled jewelry kept within a Safe Deposit Box located at:

Bank of America
433 Boston Post Road
Port Chester, NY 10573

2. Sub-limit for Exclusion B of USD 750,000 any one loss.

The Exclusion Provision provides:

EXCLUSIONS
This Insurance does not cover:
* * * *

B. Loss of or damage to jewelry or watches unless such items are:
(i) being worn or
(ii) being carried by hand under the personal supervision of the insured or
(iii) deposited in a bank or locked safe, unless the insured is staying at a hotel or motel when such items are kept in the principal safe of the hotel or motel.

Plaintiff contends that any loss within Exclusion B is subject to the sub-limit which is for Exclusion B and therefore for any loss under the policy falling within Exclusion B, the $750,000 sub-limit would apply and any loss falling within any exception to "Exclusion B", is subject to the main policy limit. Plaintiff further contends that the Plaintiff was robbed when she handed over the jewelry to Shimunov because he had a larcenous intent and therefore, the loss occurred at that point, when the jewelry was being carried by hand under the personal supervision of the insured, creating a question of fact.



theJasmineBRAND.com

Lastly, the Plaintiff asserts that if a provision, providing an exclusion of coverage, is ambiguous, it must be resolved in favor of the insured and against the insurer who drafted the contract. Plaintiff claims that the policy here does not contain an exclusion for loss occasioned by the dishonest acts of a person to whom the insured entrusts the insured property. Plaintiff states that if Underwriters intended this exclusion, they could have made that intention clear and since the policy is silent in this regard, Exclusion B is not applicable.

Underwriters opposes this Court granting the Plaintiff leave to reargue, but the Court will grant the Plaintiff's leave to reargue and address the Plaintiff's arguments.

Plaintiff's arguments that the Court placed undue emphasis on the Risk Details while omitting the Cover and that the Risk Details is part of the placing slip, are without merit. The Risk Details are obviously a part of the policy and are not simply part of a placing slip as claimed by the Plaintiff. The terms of the policy were negotiated back and forth and the exclusions were spelled out for the Plaintiff's representative.

"In resolving insurance disputes, we look first to the language of the applicable policies," *Fieldston Prop. Owners Assn., Inc. v. Hermitage Ins. Co., Inc.*, 16 N.Y.3d 257, 264, 920 N.Y.S.2d 763, 945 N.E.2d 1013 (2011). "If the plain language of the policy is determinative, we cannot rewrite the agreement by disregarding that language." ( *Id.*) "Unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court." *Vigilant Ins. Co. v. Bear Stearns Cos., Inc.*, 10 N.Y.3d 170, 177, 855 N.Y.S.2d 45, 884 N.E.2d 1044 (2008).

The Court's reading of the policy is that the jewelry is covered for $2,494,831 for



theJasmineBRAND.com

any one loss if the jewelry is kept in the specific Bank of America safe deposit box. If the jewelry is not in that safe deposit box, then the sub-limit for Exclusion B of $750,000 for any one loss applies and the limits in Exclusion B are that the jewelry is not covered unless it is

> (i) being worn
> (ii) being carried by hand under the personal supervision of the insured or
> (iii) deposited in a bank or locked safe, unless the insured is staying at a hotel or motel when such items are kept in the principal safe of the hotel or motel.

The policy has two sums insured and this is clearly stated in the policy and not ambiguous in any way. The first sum is for $2,494,831 and the second for $750,000. Any loss when the jewelry was not in the safe deposit box, is excluded from coverage, unless (I), (ii) and (iii) of the exclusions apply. The fact that the Cover of the policy does not refer to the limitations, does not make the Risk Details invalid. The limitations are included within the policy and are to be read in conjunction with the Cover.

The Lloyd's website is of no consequence to the terms of the policy in this case and is not binding on this Court. Further, it does not create an issue of fact in deciphering the policy. As stated above, this Court has read the policy as Bank of America creating a limitation on coverage and the sub-limit to Exclusion B to be applicable when not in the Bank of America vault and there are any one of the three exceptions delineated.

The absence of a dishonest entrustment clause is not valid argument either for finding an issue of fact. The parties negotiated the terms of the policy and included the terms they wanted to include in the policy. This Court cannot now second guess the



theJasmineBRAND.com

terms and determine that a specific term should have been included. Additionally, it has not been determined that there has been a dishonest entrustment, since Shimanov claims to have returned the jewelry to the Plaintiff and the Plaintiff's case against Shimanov is still pending.

Based upon the plain meaning language of the Policy, the items were not being worn and Plaintiff could not have been wearing them when she handed them to Shimanov in a bag. Further, the Plaintiff voluntarily handed the jewelry over to Shimanov and relinquished physical dominion and control to him, without notification to Underwriters. The items were neither lost nor misplaced. Therefore, the Plaintiff ceased to personally supervise Shimanov's carrying or handling of her jewelry as soon as she watched him walk away with the jewelry. Whether Shimanov had a dishonest intent or not is irrelevant in this summary judgment determination, since such handing over of the jewelry, was not covered by the Sum Insured (2) sub-limit of the policy.

Plaintiff has failed to set forth evidentiary proof establishing the existence of a material issue of fact. Therefore, the Court adheres to its prior Decision and Order granting summary judgment to Underwriters.

The parties are directed to appear before the Trial Readiness Part on March 17, 2015. To the extent any relief requested in Motion Sequence 4 was not addressed by the Court, it is hereby deemed denied.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
January 13, 2015

HON. SAM D. WALKER, J.S.C.



theJasmineBRAND.com