

El-Ad 250 W. LLC v Zurich Am. Ins. Co.
2015 NY Slip Op 05886
Decided on July 7, 2015
Appellate Division, First Department
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Decided on July 7, 2015

Tom, J.P., Andrias, Feinman, Gische, Kapnick, JJ.

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[*1] El-Ad 250 West LLC, Plaintiff-Appellant,

v

Zurich American Insurance Company, Defendant-Respondent.

Dickstein Shapiro LLP, New York (James R. Murray of counsel), for appellant.

Mound Cotton Wollan & Greengrass, New York (Philip C. Silverberg and Mark S. Katz of counsel), for respondent.

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered June 30, 2014, which denied plaintiff's motion for partial summary judgment, and granted defendant's motion for partial summary judgment declaring that the builders risk insurance policy defendant issued to plaintiff limited the amount defendant must pay for

delay in completion losses caused by the peril of flood to \$5 million, and that the policy's flood deductible applied to such payments, unanimously affirmed, with costs.

The plain language of the delay in completion coverage form, which incorporated the policy terms by reference (*see AIU Ins. Co. v American Motorists Ins. Co.*, 292 AD2d 277, 278 [1st Dept 2002]), applied the \$5 million flood sublimit to "all" losses, including nonphysical damage losses, such as those resulting from a delay in completion. Reading the coverage in such a way as to find that flood losses do not apply to delay in completion losses would render the flood limit meaningless with respect to that coverage (*see Executive Risk Indem., Inc. v Starwood Hotels & Resorts Worldwide, Inc.*, 98 AD3d 878, 881 [1st Dept 2012], *lv denied* 21 NY3d 851 [2013]; *see also Altru Health Sys. v American Protection Ins. Co.*, 238 F3d 961, 964 [8th Cir 2001] [applying flood coverage sublimit to business interruption and extra expense coverages]; *Gilbert/Robinson, Inc. v Sequoia Ins. Co.*, 655 SW 2d 581, 586 [Mo Ct App 1983] [finding flood endorsement's limit applied to reduce business interruption coverage]).

In light of the policy language, plaintiff's contention that the flood limit applies solely to [*2]losses resulting from physical damage, is unavailing. The fact that the main policy and the coverage form may have separate deductibles or coverage periods pertains to the type of losses at issue, and does not preclude a single overriding flood limit.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 7, 2015

CLERK

[Return to Decision List](#)