



New World Frontier Inc. v. Mount Vernon Fire Insurance Co.

253 A.D.2d 455 (1998) | Cited 1 times | New York Supreme Court | August 10, 1998

3088D

Submitted - June 10, 1998

DECISION & ORDER

In an action, inter alia, for a judgment declaring that the defendant has a duty to defend and indemnify the plaintiff in an action entitled Park v New World Frontier pending in the Supreme Court, Queens County, under Index No. 19016/96, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Schmidt, J.), dated August 7, 1997, as denied its motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, the defendant's motion is granted, and the matter is remitted to the Supreme Court, Queens County, for the entry of a judgment declaring that the defendant has no duty to defend or indemnify the plaintiff in the action entitled Park v New World Frontier pending in the Supreme Court, Queens County, under Index No. 19016/96.

The "Molestation or Abuse Exclusion" in the policy issued by the defendant insurance carrier excludes from coverage "any injury sustained by any person arising out of or resulting from molestation or abuse by", inter alia, any employee of the plaintiff nursery school or "any other person". The "clear and unmistakable language" (Incorporated Vil. of Cedarhurst v Hanover Ins. Co., 89 NY2d 293, 298) of this exclusion applies to the underlying action, in which the complaint alleges, in pertinent part, that a four-year-old female student was "assaulted, battered and sexually molested" by a five-year-old male student. Since no cause of action would exist "but for" the alleged sexual molestation, the underlying action is based on molestation or abuse and the exclusion applies (see, Mount Vernon Fire Ins. Co. v Creative Hous., 88 NY2d 347, 350; U.S. Underwriters Ins. Co. v Val-Blue Corp., 85 NY2d 821).

The plaintiff's remaining contentions are without merit.

MANGANO, P.J., MILLER, PIZZUTO and KRAUSMAN, JJ., concur.

ENTER: Martin H. Brownstein Clerk

