

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

GEORGE JOSEPH,

Plaintiff,

-against-

THE NEW YORK PROPERTY INSURANCE
UNDERWRITING ASSOCIATION, THE NEW
YORK STATE DEPARTMENT OF
FINANCIAL SERVICES, JOHN HALPIN,
d/b/a SCHEPIS ADJUSTING SERVICES,
LTD., and JOHN DOE #1 through JOHN DOE
10, representing any and all officers, agents,
partners, employees, representatives of the
defendants in this caption,

Defendants.

ORIG. RETURN DATE: MARCH 23, 2017
FINAL SUBMISSION DATE: MARCH 23, 2017
MTN. SEQ. #: 002
MOTION: MG

SELF-REPRESENTED PLAINTIFF:

GEORGE JOSEPH
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BELLPORT, NEW YORK 11713

**ATTORNEY FOR DEFENDANTS THE
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Upon the following papers numbered 1 to 9 read on this motion _____

FOR SUMMARY JUDGMENT

Notice of Motion and supporting papers 1-3; Memorandum of Law 4; Plaintiff's Reply and
supporting papers 5, 6; Affidavit in Support of Plaintiff's Reply 7; Reply Affirmation and
Affidavit 8, 9; it is,

ORDERED that this motion by defendants THE NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION and JOHN HALPIN, d/b/a SCHEPIS ADJUSTING SERVICES, LTD. (collectively “defendants”) for an Order, pursuant to CPLR 3212 (b), granting summary judgment dismissing the complaint as asserted against defendants, is hereby **GRANTED**. The Court has received opposition to this application from the self-represented plaintiff, GEORGE JOSEPH.

By Order dated October 3, 2016, this Court granted a motion by defendant THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES to dismiss the complaint as asserted against it. As recited in the prior Order:

By a “Complaint & Jury Demand” filed on December 31, 2015, the self-represented plaintiff challenges a decision by defendant THE NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION (“NYPIUA”) to deny his property insurance claim relating to damage to his home. In reaching this decision, NYPIUA relied upon a report prepared by defendant JOHN HALPIN, d/b/a SCHEPIS ADJUSTING SERVICES, LTD. (“Halpin”) who found, after personally investigating the damage, that it was not caused by vandals but by a broken shower fixture, making it not a covered loss under Joseph’s insurance policy. Joseph, apparently extremely displeased by this, appears to have embarked on a crusade to convince NYPIUA to reverse its determination and provide him with coverage. Despite multiple attempts, Joseph was unsuccessful.

Defendants have now filed the instant application for summary judgment to dismissing the complaint as against them. On a motion for summary judgment the Court’s function is to determine whether issues of fact exist not to resolve issues of fact or to determine matters of credibility (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910 [2007]; *Kolivas v Kirchoff*, 14 AD3d 493 [2005]). Therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true


(see *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 [2004]; *Roth v Barreto*, 289 AD2d 557 [2001]; *Mosheyev v Pilevsky*, 283 AD2d 469 [2001]). The failure of the moving party to make such a *prima facie* showing requires denial of the motion regardless of the insufficiency of the opposing papers (see *Dykeman v Heht*, 52 AD3d 767 [2008]; *Sheppard-Mobley v King*, 10 AD3d 70 [2004]; *Celardo v Bell*, 222 AD2d 547 [1995]). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v New York*, 49 NYS2d 557 [1980]). However, mere allegations, unsubstantiated conclusions, expressions of hope or assertions are insufficient to defeat a motion for summary judgment (see *Zuckerman v City of New York*, *supra*; *Blake v Guardino*, 35 AD2d 1022 [1970]).

Here, the Court finds that defendants have established *prima facie* that they are entitled to judgment as a matter of law dismissing the complaint as asserted against them. The burden then shifted to plaintiff to raise a triable issue of fact. Plaintiff has failed to do so. Defendants have established that plaintiff's claim of property damage allegedly due to vandalism was properly denied, and in opposition, plaintiff has failed to submit proof that a covered event occurred under the subject insurance policy (see *TAG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507 [2008]; *Consol. Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208 [2002]; *Technicon Electronics Corp. v American Home Assurance Co.*, 74 NY2d 66 [1989]).

Accordingly, this motion by defendants for summary judgment dismissing the complaint as asserted against them is **GRANTED**.

The foregoing constitutes the decision and Order of the Court.

Dated: September 17, 2019


HON. JOSEPH FARNETI
Acting Justice Supreme Court

 X FINAL DISPOSITION

 NON-FINAL DISPOSITION

Hon. Joseph Farneti
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