


STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 HARLEYSVILLE GROUP INSURANCE,)
 A PENNSYLVANIA CORPORATION)
)
 Plaintiff,)
)
 VS.)
)
 HERITAGE COMMUNITIES, INC, A)
 SOUTH CAROLINA CORPORATION;)
 HERITAGE MAGNOLIA NORTH, INC.)
 A SOUTH CAROLINA CORPORATION;)
 BUILDSTAR CORPORATION, A)
 SOUTH CAROLINA CORPORATION,)
 MAGNOLIA NORTH HORIZONTAL)
 PROPERTY REGIME, MAGNOLIA)
 NORTH PROPERTY OWNERS)
 ASSOCIATION, INC. A SOUTH)
 CAROLINA CORPORATION and)
 NATIONAL SURETY CORP.)
)
 Defendants)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-26-11862

ORDER

This matter came before the undersigned as Special Referee pursuant to Motions to Vacate, Alter or Amend the Orders which I previously issued dated February 28, 2013, and filed with the Court on March 13, 2013. This hearing was held on April 9, 2013.

Harleysville is represented by Robert C. Calamari, Esquire, formerly of the firm of McAngus, Goudelock & Courie, LLC and now of Nelson Mullins Riley and Scarborough and C. Mitchell Brown, also of Nelson Mullins Riley and Scarboarough; the “judgment holders”, Heritage Magnolia North, Inc. Property Owners Association is represented by John P. Henry, Esquire, and Philip C. Thompson, Esquire, of the firm of Thompson & Henry, P.A.; National Surety Corp. is represented by Laura Johnson Evans of the firm of Smith Moore Leatherwood, LLP and Karin McCarthy of the firm of Rivkin Radler, Attorneys at Law, of New York. The


1 

positions of the parties have been set forth in their Motions and/or correspondence submitted to the undersigned and were fully argued.

I have considered the positions addressed by the Plaintiff in this matter, as well as the Defendant judgment holders represented by Mr. John P. Henry, and National Surety Corp. represented by Ms. Laura Johnson Evans and Ms. Karin McCarthy. Except as provided for hereinafter, the requests of the parties to this suit presented to the undersigned by way of Motion and oral argument are denied.

The Plaintiff requested clarification as to its Motion for a Default Judgment with respect to its insureds, Heritage Communities, Inc., Heritage Magnolia North, Inc. and Build-Star Corporation. The Court notes that while the issue was discussed in its initial Order, the decretal portion did not contain the Court's Ruling. As stated by the Court in its prior Order, Harleysville's insureds, being Heritage Communities, Inc., Heritage Magnolia North, Inc. and Build-Star Corporation, did not answer or otherwise appear in the declaratory action, although properly served. The Court does find that these insureds of Harleysville are in default. However, while the Court finds that these insureds are in default and are individually prohibited from re-litigating any issues involved in the case, this default does not affect the rights of the Plaintiff judgment holders in the underlying cases. These Plaintiff judgment holders in the underlying cases have stepped into the shoes of the Harleysville insureds, and they are not prejudiced in any way by the default of Harleysville's insureds.

By a separate Order, the Court found that the claim by the Plaintiff in this declaratory action against the Defendant, National Surety Corp., should be dismissed, as the coverage provided by the Harleysville policies was sufficient to pay the claims of the Plaintiff judgment holders in the underlying action. The Court further provided that in the event that there was, at some point, a final judgment that would trigger coverage under the National Surety Corp.'s

2 

excess policy, then such claim could be asserted at that time. National Surety Corp. has requested that all discovery responses that have been generated in the action between these two parties be preserved by Harleysville. The Court finds that it would be implicit in its Order that since the claims between Harleysville and National Surety Corp. could arise in the future that such discovery responses would be preserved. However, the Court will, by this Order, make the same clear.

IT IS, THEREFORE, ORDERED:


1. That Harleysville's insureds, Heritage Communities, Inc., Heritage Magnolia North, Inc. and Build-Star Corporation, be and the same hereby are declared to be in default. However, this default as to these Defendants, while prohibiting them from individually re-litigating any issues involved in these cases, does not affect the rights of the Plaintiff judgment holders in the underlying action, who have stepped into the shoes of the insured.

2. That Harleysville Group Insurance, a Pennsylvania Corporation, and National Surety Corp. shall both preserve any and all discovery materials that are responsive to discovery which has been initiated in the case between these two (2) parties, which was bifurcated from the principal case so that this information will be available in the event that there is a final judgment at some point in time that would trigger coverage under National Surety Corp.'s excess policy.

3. That all other relief requested by the various parties, pursuant to their Motions to Vacate, Alter or Amend, or other filings which were addressed by these parties at the hearing on April 9, 2013, be and same hereby is denied.

IT IS SO ORDERED.

Darlington, South Carolina.
April 22, 2013.



JOHN M. MILLING, Special Referee

3 