Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS V. POLIZZI IA PART 14
Justice

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AUDAX CONSTRUCTION CORPORATION

Index Number 28888 1999

- against -

Motion Date October 22, 2002

METROPOLITAN TRANSPORTATION AUTHORITY, et al.

Motion Cal. Number 2

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The following papers numbered 1 to 16 read on this motion by defendant Royal Insurance Company of America for an order permitting the renewal of its previous cross motion for summary judgment and the renewal of plaintiff Audax Construction Corporation's previous motion for summary judgment against it on the issue of liability.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1 - 4
Answering Affidavits - Exhibits	5 - 12
Reply Affidavits	13 - 14
Other (Memoranda of Law).....	15 - 16

Upon the foregoing papers it is ordered that leave to renew is granted. The cross motion by defendant Royal for summary judgment dismissing the complaint against it is granted. The motion by the plaintiff for summary judgment against defendant Royal on the issue of liability arising under its complaint is denied.

(See the accompanying memorandum.)

Dated: January 7, 2003

J.S.C.

M E M O R A N D U M

SUPREME COURT : QUEENS COUNTY
IA PART 14

AUDAX CONSTRUCTION CORPORATION

- against -

METROPOLITAN TRANSPORTATION AUTHORITY, et al.

INDEX NO. 28888/99

BY: POLIZZI, J.

DATED: January 7, 2003

Defendant Royal Insurance Company of America has moved for an order permitting the renewal of its previous cross motion for summary judgment and the renewal of plaintiff Audax Construction Corporation's previous motion for summary judgment against it on the issue of liability. Leave to renew is granted. (See decision of Mr. Justice Schmidt dated September 4, 2001.)

Plaintiff Audax owns premises known as 31-04/31-16 Northern Boulevard, Long Island City, New York. Defendant Royal Insurance Company of America issued a policy covering the premises which was in effect for the period September 23, 1998 to September 23, 1999. The policy contains an exclusion for the peril of collapse and an exception to the exclusion known as "Additional Coverage for Collapse." The policy provided in relevant part: "We will not pay for loss or damage caused by or resulting from any of the following: *** k. Collapse, except as provided below in the Additional Coverage for Collapse. But if Collapse results in a Covered Cause of Loss at the described premises, we will Pay for the loss or damage caused by that Covered Cause of Loss." "D. ADDITIONAL COVERAGE-COLLAPSE [:] The term Covered Cause of Loss

includes the Additional Coverage-Collapse as described and Limited in D.1 through D.5 below. 1. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this Coverage Form, if the collapse is caused by one or more of the following: a. The 'specified cause of loss' or breakage of building glass, all only as insured against in this Coverage Part; b. Hidden decay; c. Hidden insect or vermin damage; d. Weight of people or personal property; e. Weight of rain that collects on the roof; f. Use of defective material or methods of construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause listed in D.1a through D.1e, we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation contributes to the collapse. F. DEFINITIONS [:] 'Specified Causes of Loss' means the following: Fire; lightening; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; fire damage."

In 1998 and 1999, defendant Metropolitan Transportation Authority did construction work involving an extension of a subway route beneath Northern Boulevard. The plaintiff alleges that on or about January 19, 1999, the construction work done by the

Metropolitan Transportation Authority and its prime contractor, defendant Slattery/Perini, caused plaintiff's building to shift and its joints to become loose from its beams. The plaintiff filed a claim with defendant Royal, but the latter disclaimed coverage by letter dated March 13, 2000. The plaintiff then brought an action for breach of contract against its insurer.

Summary judgment is warranted where, as in the case at bar, there is no issue of fact which must be tried. (See, Alvarez v Prospect Hospital, 68 NY2d 320.) "In the absence of an ambiguity giving rise to mixed questions of law and fact, the construction and interpretation of an insurance policy, as is the case with other written instruments, present questions of law to be determined by the court ***." (Triboro Coach Corp. v State of New York, 88 AD2d 202, 204; Stainless, Inc. v Employers Fire Ins. Co., 69 AD2d 27, affd. 49 NY2d 924.) Contrary to the plaintiff's contention, the relevant terms in the insurance policy issued by defendant Royal are not ambiguous. The policy issued by defendant Royal generally excludes from coverage damage due to the collapse of the insured premises. Although there are exceptions to the exclusion, the event which allegedly caused damage to the plaintiff's building does not fall within the definition of "specified causes of loss." Moreover, contrary to the plaintiff's contention, the exception to the exclusion provided by clause D.1.f. of the Additional Coverage-Collapse section of the policy does not provide coverage for the event which triggered the plaintiff's loss. That clause provides coverage where the collapse

occurs because of "[u]se of defective material or methods of construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation." In interpreting the meaning of the term "construction" as used in the clause, the court relies on the rule of noscitur a sociis, "an old fundamental maxim which summarizes the rule both of law and of language that associated words explain and limit each other. In effect, it is a rule of construction whereby the meaning of a word in a provision may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it." (Popkin v Security Mut. Ins. Co. of New York, 48 AD2d 46, 48; see, Ryan v Morse Diesel, Inc., 98 AD2d 615.) The term "construction" is used in the relevant clause in association with the terms "remodeling" and "renovation," which indicates that the term "construction" is limited to work upon the premises itself. The term "construction" as used in the relevant clause does not include within its scope the building of a subway line in the neighborhood. Again applying the rule of noscitur a sociis, the court notes that clauses D1b-f all involve causes of collapse which arise in or on the insured premises itself. Insured causes of collapse which arise beyond the premises are carefully included in the provision for "specified causes of loss," and, unfortunately for the plaintiff, which must be left to its remedy, if any, against the MTA, construction in the neighborhood is not one of them.

Accordingly, the cross motion by defendant Royal for

summary judgment dismissing the complaint against it is granted. The motion by the plaintiff for summary judgment against defendant Royal on the issue of liability arising under its complaint is denied.

Short form order signed herewith.

J.S.C