

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

XIN WANG CHEN,

Plaintiff,

- v -

HYUNDAI MARINE & FIRE INSURANCE CO., LTD., and
CHAO'S INSURANCE AGENCY, INC.

Defendants.

-----X

INDEX NO. 157790/2020

MOTION DATE 03/11/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISS.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion pursuant to CPLR 3211(a)(1) of defendant Hyundai Marine & Fire Insurance Co, Ltd to dismiss the complaint against it is GRANTED and the complaint is dismissed against it; and it is further

ORDERED that such claim against defendant Hyundai Marine & Fire Insurance Co, Ltd are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Hyundai Marine & Fire Insurance Co, Ltd dismissing the claims made against it in this action, together

with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

ORDERED that counsel for the remaining parties are directed to post on NYSCEF a proposed preliminary conference order or proposed competing preliminary conference order(s) at least two days before January 31, 2023, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

DECISION

Contrary to plaintiff's contention, the application for fire insurance that he signed (NYSCEF Doc No 8) was not "blank", i.e., silent, as to his representation that the premises was a four-family tenant-occupied house. On page two of such application, under "Information Used to Rate Your Premium", in the box headed "No. of Families" is typed the number "4". Plaintiff does not deny that there were more than four families residing at the premises. Such admission coupled with irrefutable documentary evidence of a material representation made by the insured renders the fire insurance policy void ab initio, and plaintiff is entitled to no more than a full refund

of the premium paid that he paid. See Dauria v CastlePoint Ins. Co., 140 AD3d 406 (1st Dept 2013).

Debra A. James

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12/21/2022
DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE