23

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2015-1794-B

LIBERTY MUTUAL INSURANCE COMPANY,
Plaintiff

vs.

JOEL GONZALEZ, SOMALY YET, and MANUFACTURERS & TRADERS COMPANY d/b/a M&T BANK,
Defendants

MEMORANDUM AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT BY DEFENDANT JOEL GONZALEZ AND PLAINTIFF LIBERTY MUTUAL INSURANCE COMPANY

I. BACKGROUND

The defendant/counterclaim plaintiff, Joel Gonzalez ("Gonzalez"), has moved pursuant to Mass. R. Civ. P. 56 for summary judgment on the issue of liability on his breach of contract counterclaim against his insurer, the plaintiff/counterclaim defendant, Liberty Mutual Insurance Company ("Liberty Mutual") (Gonzalez's Counterclaim Count I). Gonzalez also moves for summary judgment as to Liberty Mutual's request for declaratory relief under Count I of its complaint, wherein Liberty Mutual seeks a declaration that Gonzalez's property loss claim is not covered by the Liberty Mutual insurance policy in place at the time of the loss (Count I of Liberty Mutual's complaint). Liberty Mutual, in turn, has moved for summary judgment on its claim for declaratory judgment, as well as Gonzalez's counterclaims (breach of contract and, in Counterclaim Count II, violation of G.L. c. 93A). This dispute relates to a fire that co-defendant, Somaly Yet ("Yet"), started at a house in Lynn, Massachusetts that she and Gonzalez jointly owned. Both Gonzalez and Yet were named as insureds on the Liberty Mutual policy. Although Liberty Mutual alleges that Yet's actions were precipitated by Gonzalez's just-announced

termination of their romantic relationship and his refusal of her overture to reconcile, it is undisputed that Gonzalez did not participate in the actual setting of the fire. Yet pleaded guilty to a charge of arson (she also pleaded guilty to a charge of assault and battery by means of a dangerous weapon, relating to a collision between her vehicle and that of Gonzalez outside the residence immediately after she set the fire). On those unadorned and uncontested facts, Gonzalez and Liberty Mutual each claim entitlement to a ruling as a matter of law regarding whether the Liberty Mutual policy covered the loss. A non-evidentiary hearing on the motion was held on June 6, 2017. For the reasons that follow, Gonzalez's Motion for Summary Judgment is **ALLOWED** and Liberty Mutual's Motion for Summary Judgment is **DENIED**.

II. GOVERNING LEGAL PRINCIPLES

Summary judgment is appropriate when the moving party demonstrates that there is no genuine dispute of material fact and that he is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Pederson v. Time, Inc.*, 404 Mass. 14, 16-17 (1989). The movant makes this showing by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Flesner v. Technical Communications Corp.*, 410 Mass. 805, 809 (1991). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon bare allegations or denials in the pleadings, but must, by probative documentary evidence, set forth specific facts showing that there is a genuine issue of material fact for trial. *See Pederson v. Time, Inc.*, 404 Mass. at 17; *Key Capital Corp. v. M & S Liquidating Corp.*, 27 Mass. App. Ct. 721, 728 (1989). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an

issue upon which reasonable minds could differ. *Cassesso v. Commissioner of Corr.*, 390 Mass. 419, 422 (1983).

That the parties here filed cross motions for summary judgment does nothing to alter or amend this standard of review; it is not decisive of either the lack of factual controversy, *see Bernard J. Basch & Sons v. Travelers Indem. Co.*, 392 Mass. 1002, 1003 (1984), or the absence of a need for further evidentiary exploration of issues at trial. *Fidelity Co-op Bank v. Nova Cas. Co.*, 726 F.3d 31, 36 (1st Cir. 2013) (citation and internal quotation omitted). It demands only that the court consider "each motion separately and draw all reasonable inferences in favor of the respective non-moving party." *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 89 (1st Cir. 2013). *See Bernard J. Basch & Sons v. Travelers Indem. Co.*, 392 Mass. at 1003. To that end, the court considers pleadings, deposition transcripts, answers to interrogatories, admissions on file, and affidavits in the light most favorable to the applicable non-moving party, but does not weigh evidence, assess credibility, or find facts. *See* Mass. R. Civ. P. 56(c); *Attorney Gen. v. Bailey*, 386 Mass. 367, 370-371 (1982).

A dispute over the proper interpretation of an insurance policy raises a question of law. *Massachusetts Bay Transp. Auth. v. Allianz Ins. Co.*, 413 Mass. 473, 476 (1992). *See also Cody v. Connecticut Gen. Life Ins. Co.*, 387 Mass. 142, 146 (1982) ("The interpretation of an insurance contract is not a question of fact for the jury[,]" but "a question of law for the [] judge."). Although generally interpreted in the same manner as "any other contract," *The Money Store/Massachusetts, Inc. v. Hingham Mut. Fire Ins. Co.*, 430 Mass. 298, 300 (1999), the rules of construction peculiar to insurance contracts apply. *Cody v. Connecticut Gen. Life Ins. Co.*, 387 Mass. at 146. Like all contracts, the court is obliged to ask in the first instance whether the contract, when viewed as a whole, is clear and unambiguous. *See Sullivan v. Southland Life Ins.*

Co., 67 Mass. App. Ct. 439, 442 (2006). If it is, the court is required to construe the express policy language in its plain, ordinary, and popular sense as a matter of law, so as "to give reasonable effect to each of its provisions." *Id.*, quoting *J.A. Sullivan Corp. v. Commonwealth*, 397 Mass. 789, 795 (1986). If, however, an ambiguity lurks in the parties' agreement, it is a cardinal tenant of insurance contract construction that the ambiguity is construed in favor of the insured. *Hazen Paper Co. v. U.S. Fid. & Guar. Co.*, 407 Mass. 689, 700 (1990). In particular, exclusions are strictly construed so as not to diminish the protections purchased by the insured. *City Fuel Corp. v. National Fire Ins. Co. of Hartford*, 446 Mass. 638, 640 (2006).

III. DISCUSSION

The following facts are drawn from the summary judgment record. They are undisputed, except where otherwise noted. Gonzalez and Yet purchased a residence located at 48 Sheridan Street in Lynn, Massachusetts on or about December 5, 2014. Gonzalez and Yet subsequently purchased a homeowner's policy from Liberty Mutual that covered damage and/or loss by fire. The policy contained a list of exclusions. Of significance to this case is the exclusion for "Intentional Loss," which provides:

> We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence. . . . Intentional Loss, meaning any loss arising out of any act committed (1) By or at the direction of an "insured"; and (2) With the intent to cause loss.

Section I(1)(h).

Shortly before 11:00 A.M. on April 3, 2015, Yet set fire to the residence after Gonzalez told her that he was ending their relationship. Soon after she set the fire, Yet was taken into custody. On April 7, 2015, a designated forensic psychologist of the Lynn District Court, Dr. Tammy Howe, filed her evaluation report with the court and testified that Yet not only met "the

standard for commitment for the question of competency" but also met the "standard for commitment just based on psychiatric symptoms." Yet was then committed to the Dr. Solomon Carter Fuller Mental Health Center in Boston, and, on April 23, 2015, Dr. Daniel R. Reilly, a board-certified forensic psychiatrist, determined that Yet was incompetent to stand trial. Following several weeks of treatment, Yet was deemed competent to stand trial. Yet later pleaded guilty to a charge of arson and assault and battery by means of a dangerous weapon.

When Gonzalez sought payment under the policy, Liberty Mutual denied his claim on the ground that his recovery was barred by the intentional loss exclusion. Two months after denying Gonzalez's claim, Liberty Mutual filed the instant action seeking a declaration that Gonzalez (Count I) and Yet (Count II) were not entitled to coverage under the policy. It also sought a declaration as to the amount owed to mortgagee M&T Bank (Count III).

Under the express and unambiguous terms of the Liberty Mutual policy, any loss arising out of an act committed by "an insured" with the intent to commit a loss is not covered. On the undisputed facts of record, that exclusion appears unquestionably to apply. Gonzalez contends, however, that there is a genuine factual dispute as to whether Yet had the requisite mental capacity to act intentionally at the time that she started the fire. He cites to *Hanover Ins. Co. v. Talhouni*, 413 Mass. 781, 787 (1992), for the proposition that an insurer may not deny coverage to a mentally ill policyholder who lacked the capacity to form the intent for purposes of an exclusionary clause, and he contends that a question of fact is presented regarding the applicability of the intentional loss exclusion, one that is not suitable for resolution by summary judgment.[1]

---

[1] In *Hanover Ins. Co. v. Talhouni*, a teenager was convicted by a jury of indecent assault and battery. 413 Mass. at 782. At the time of the incident, he was under the influence of LSD. *Id.* at 782-783. Talhouni sought indemnification under his parents' homeowner's policy with Hanover, and Hanover sought a declaration that it had no duty to indemnify Talhouni. *Id.* at 783-784. In affirming the trial judge's denial of the declaratory relief sought by Hanover, the Supreme Judicial Court concluded that a triable issue existed as to Talhouni's "capacity to form intent." *Id.* at 785. After noting

In *Baker v. Commercial Union Ins. Co.*, 382 Mass. 347, 350-351 (1981), the Supreme Judicial Court held that wrongful conduct of an insured caused by an involuntary mental condition did not bar an innocent co-insured spouse from recovering under the insurance policy in place at the time of the incident. There, the plaintiff filed a claim with his insurer after his house was destroyed by a fire. *Id.* at 348. His wife, a named insured on the policy who had a history of mental health issues, set the fire and stayed at the scene to watch the house burn after he told her that he was going to file for divorce. *Id.* The insurer subsequently denied the plaintiff's claim based on a loss exclusion that barred recovery where the insured neglects to use all reasonable means to save and preserve the property. *Id.* at 350-351.[2] In holding that the express policy language did not bar the plaintiff from recovery on the policy, the Supreme Judicial Court explained:

> It is a well-established rule that "(i)f the insured was insane at the time that he wilfully or intentionally caused the fire, the insurer remains liable on the policy" unless there is an express provision to the contrary in the policy, 18 Anderson, Couch's Cyclopedia of Insurance Law s 74:662 at 586 (2d ed. 1968), for, in such cases, the insured is deemed to be incapable of forming a fraudulent intent. *See Hier v. Farmers Mut. Fire Ins. Co.*, 104 Mont. 471, 484, 67 P.2d 831 (1937); *Bean v. Mercantile Ins. Co. of America*, 94 N.H. 342, 344-345, 54 A.2d 149 (1947); *Ruvolo v. American Cas. Co.*, 39 N.J. 490, 496-497, 189 A.2d 204 (1963); *Showalter v. Mutual Fire Ins. Co.*, 3 Pa.Super. 448, 452 (1897); 5 Appleman & Appleman, Insurance Law and Practice s 3113 at 396 & n.78 (rev. ed. 1970). Since Commercial did not expressly exclude mental illness from this policy, the plaintiff is entitled to recover the full value of the policy if Garland was not responsible for her conduct on the day of the fire.

Id.

---

that the insurer must show the insured intended to cause harm, the court adopted the rule followed by a majority of other jurisdictions that "'intoxication may destroy, for purposes of the exclusion, the capacity to form the requisite intent.'" *Id.* at 786 (internal quotation omitted).

2

The provisions at issue provided: "This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto. . . . This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by . . . (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in the neighboring premises." *Id.* at 350 n.6.

Similar to the policy in *Baker v. Commercial Union Ins. Co.*, the Liberty Mutual policy at issue in the case at bar does not expressly exclude recovery for losses incurred on account of purposeful conduct of an insured carried out during the throes of mental illness. While there is substantial evidence in the summary judgment record to support Liberty Mutual's contention that Yet acted reflectively and purposefully in setting the fire, and with a clear understanding of what she was doing, and thus, that she acted with the requisite intent to cause damage, there is also substantial evidence of Yet's serious mental health issues both before and immediately after her arsonist conduct. In the days following her arrest, Yet's condition was sufficiently acute that she was sent for in-patient psychiatric treatment, and she was subsequently found incompetent to stand trial. Although a close question on this issue is presented, the court concludes that it cannot determine as a matter of law in Liberty Mutual's favor. The determination of whether Yet acted intentionally must be made by a fact-finder at trial.[3]

Gonzalez does not merely oppose summary judgment for Liberty Mutual, but he affirmatively seeks summary judgment based on a pure legal argument. He argues that, if the policy as written is interpreted to bar coverage for an innocent co-insured, it must be reformed to provide the level of coverage prescribed by G.L. c. 175, s. 99, which, he contends, allows recovery by an innocent co-insured. General Laws c. 175, s. 99, mandates the form of fire insurance policies in Massachusetts. *Ideal Fin. Servs., Inc. v. Zichelle*, 52 Mass. App. Ct. 50, 66 (2001). That statutory provision prohibits insurers from issuing policies that deviate in coverage

---

[3] In arguing that the evidence of record does establish as a matter of law that Yet acted volitionally, Liberty Mutual points to her alleged motive to set the fire because Gonzalez had just told her that he was ending their relationship and he then ignored her threat to commit the arson if he did not agree to stay. Liberty Mutual also points to disputed allegations that Gonzalez had been physically and emotionally abusive to Yet during their relationship. It bears noting that, in so arguing, Liberty Mutual does not contend that Gonzalez participated as a joint venturer in the arson or that he even hoped or intended for Yet to set the fire. Nor does Liberty Mutual contest that, for purposes of the court's present analysis, Gonzalez must be deemed an innocent co-insured.

from the so-called "Standard Policy" set forth therein. *See In-Towne Restaurant Corp. v. Aetna Cas. and Sur. Co.*, 9 Mass. App. Ct. 534, 541 (1980).[4] Gonzalez cites a number of out-of-state decisions construing the Standard Policy references in certain key provisions to the acts of "the insured," as opposed to "an insured," to reflect a requirement that an insurer undertake an individualized assessment of the conduct of a culpable insured to preclude a denial of coverage to an innocent co-insured. *See, e.g., Trinity Universal Ins. Co. v. Kirsling*, 73 P.3d 102, 107 (Idaho 2003). Gonzalez also notes that the Supreme Judicial Court's expressed interest, when reviewing Standard Policy provisions, "in giving s. 99 the same treatment that is given to identical language in policies in other States." *Pappas Enterprises, Inc. v. Commerce & Indus. Ins. Co.*, 422 Mass. 80, 82 (1996) (looking to other states to resolve dispute about Standard Policy). Thus, Gonzalez asserts that where, as here, the actual policy language conflicts with the minimum protections afforded by statute under the Standard Policy, the former is void and unenforceable. *Cf. Obson v. National Union Fire Ins. Co.*, 632 So.2d 1158, 1161 (La. 1994) (holding that where the policy's intentional acts exclusion precluding recovery by innocent co-insured conflicted with state standard policy, which used phrase "the insured," "reformation of the policy to conform with the standard fire policy form is appropriate."); *Ponder v. Allstate Ins.*

---

[4] General Laws c. 175, s. 99 provides in pertinent part:

> No company shall issue policies or contracts which, under the authority of clause First of section forty-seven, insure against loss or damage by fire or by fire and lightning to property or interests in the commonwealth, other than those of the standard forms herein set forth, except as provided in section twenty two A and in section one hundred and two A, and except as follows:
>
> . . .
>
> This entire policy shall be void it whether before or after a loss, the insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Co., 729 F.Supp. 60, 62 (E.D. Mich. 1990) (concealment and fraud condition using phrase "any insured" conflicted with statutory standard insurance policy mandating "the insured" was "construed as protecting the innocent insured. . . ."); *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 692 (Minn. 1997) (holding "that, to the extent that [the] policy purports to exclude innocent co-insured spouses from coverage, it must be reformed to comply with the Minnesota standard fire insurance policy"); *Borman v. State Farm Fire & Cas. Co.*, 521 N.W.2d 266, 270 (Mich. 1994) (holding that policy's intentional acts and concealment or fraud provisions using the language "you or any person insured" and "you [and/or] any other insured" were both in conflict with Michigan's standard fire insurance policy, and, therefore, were void).

Liberty Mutual argues that the Supreme Judicial Court's decision in *Kosior v. Continental Ins. Co.*, 299 Mass. 601 (1938), wherein the Court held that an innocent co-insured spouse whose husband had intentionally set the fire that caused her loss could not recover under the express terms of the policy, is still good law and precludes recovery by Gonzalez.[5] This court agrees that that decision remains good law, *see Baker v. Commercial Union Ins. Co.*, 382 Mass. at 353 n.9, and, indeed, the court relied on that decision as controlling in *USF Ins. Co. v. Langlois*, 89 Mass. App. Ct. 44 (2014), a decision that was affirmed on appeal. But in doing so, the Appeals Court declined to reach the argument advanced by Gonzalez herein because it was raised for the first time on appeal, i.e., that the policy exclusion that resulted in that case in a denial of coverage to innocent co-insureds based on the intentional act of arson by another

[5] In *Kosior v. Continental Ins. Co.*, a husband and wife owned land and buildings that were insured under policies listing both of them as the insureds. 299 Mass. at 602. Each policy contained a provision stating: "If the insured shall make any attempt to defraud the Company, either before or after the loss, the policy shall be void." *Id.* The husband set fires that damaged and destroyed the buildings and the wife, who was not involved in the criminal wrongdoings, sought to recover under the policies. *Id.* The Court noted that "cases dealing with policies which by their express terms permit of a severance of interest of the insured are not in point," as it concluded that "the policy in question was joint and that the plaintiff cannot recover." *Id.* at 603. In so doing, it reasoned that the "act of her husband in burning the insured buildings was an act of the 'insured,' and as such it was fraud upon the defendants which rendered the policies void in accordance with their terms." *Id.*

insured was contrary to the statutory protections of G.L. c. 175, s. 99. Gonzalez maintains that *Kosior v. Continental Ins. Co.* is inapposite because it was decided before the Legislature adopted the current Standard Policy. Liberty Mutual responds by noting that Gonzalez is unable to cite a single Massachusetts case finding the exclusion inapplicable because of the Standard Policy language. But neither has Liberty Mutual cited to any Massachusetts case rejecting Gonzalez's argument that the intentional loss exclusion is superseded by the more expansive Standard Policy provision. As such, the court looks to the decisions of other jurisdictions with similar statutory standard policies.

As noted, *supra*, a number of state courts have considered the interplay between state standard policy law and conflicting policy exclusions as it relates to an innocent co-insured's ability to recover on a policy in like circumstances. To determine whether the co-insureds' obligations under the policy are joint or several, those courts focus on the term modifying the word "insured" in the policy's intentional act exclusion or fraud provisions. *See, e.g., Obson v. National Union Fire Ins. Co.*, 632 So.2d at 1160; *Trinity Universal Ins. Co. v. Kirsling*, 73 P.3d at 105; *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d at 692; *Watts v. Farmers Ins. Exch.*, 98 Cal. App. 4th 1246, 1257 (2002) (holding that "the language of the policy is determinative of whether the innocent spouse will be allowed recovery"). Many courts have held that the policy unambiguously affords coverage to the innocent co-insured where the word "the" is used to modify the word "insured." Those courts reason that, when "the insured" is given its plain and ordinary meaning, it unambiguously refers only to the named insured who has violated the terms of the policy. *See Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d at 692; *Watts v. Farmers Ins. Exch.*, 98 Cal. App. 4th at 1257. On the other hand, courts have generally held that a policy exclusion that uses the language "an insured" or "any insured" unambiguously creates a joint

obligation as to all named insureds. When this language is present in the insurance policy, coverage to an innocent co-insured will generally be denied absent further analysis under a state standard policy. *See Obson v. National Union Fire Ins. Co.*, 632 So. 2d at 1160; *Vance v. Pekin Ins. Co.*, 457 N.W.2d 589, 593 (Iowa 1990); *Woodhouse v. Farmers Union Mut. Ins. Co.*, 785 P.2d 192, 193–194 (Mont. 1990); *Trinity Universal Ins. Co. v. Kirsling*, 73 P.3d at 105 (explaining that "an insured" modifier in an intentional act and fraud exemption unambiguously excludes coverage for an innocent co-insured.); *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d at 689 ("We conclude that the 'an insured' language of [the] policy unambiguously bars coverage for innocent co-insured spouses.").

More recently, however, courts have looked to the innocent co-insured spouse's policy to see whether it conforms to the state standard policy. A policy that does not meet the minimum requirements is reformed or construed by the court to meet the standard policy statute's requirements. If the statutory policy creates a several obligation by using "the insured," an insurance policy that uses "an insured" or "any insured" is reformed to meet the requirements of the statute. *See Ponder v. Allstate Ins. Co.*, 729 F. Supp. at 62 (noting that, once the obligation under the statutory policy has been determined, the issue becomes whether the policy at issue in the particular case must be reformed to conform with the standard fire insurance policy); *Trinity Universal Ins. Co. v. Kirsling*, 73 P.3d at 107 (holding that the policy in question "provides less coverage than the standard policy in violation of [the state code]"); *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d at 691 (holding that an "'intentional loss' provision, insofar as it excludes coverage for innocent co-insured spouses, is at odds with the rights and benefits of the Minnesota standard fire insurance policy"); *Osborn v. National Union Fire Ins. Co.*, 632 So. 2d at 1160-1161 (same); *Borman v. State Farm Fire & Cas. Co.*, 521 N.W.2d at 270 (same).

After review, the court is satisfied that, although not unanimous, the overwhelming weight of appellate authority in other states addressing the very issue presented herein supports Gonzalez's position.[6] This court adopts the reasoning of those other courts. Accordingly, Gonzalez is entitled to judgment as a matter of law that the Liberty Mutual policy covered the loss at issue.

Liberty Mutual argues that, even if Gonzalez prevails on his breach of contract counterclaim, his c. 93A counterclaim fails as a matter of law because Liberty Mutual unquestionably had a good faith basis, based on a plausible interpretation of the insurance policy, for denying coverage in this case. This argument has some force given the language of the policy, the ongoing validity of *Kosior*, and the dearth of case law in Massachusetts addressing the alleged conflict between the intentional loss exclusion in the policy and the protections afforded an innocent co-insured under the Standard Policy. Gonzalez counters by asserting that, based on the information available to Liberty Mutual, a genuine issue of material fact exists as to whether it should have known that Yet lacked the capacity to form intent for purposes of the intentional loss exclusion and whether it therefore should have known that its denial of coverage was improper. As previously noted, there are many aspects of Yet's conduct surrounding her setting of the fire to which Liberty Mutual can point in support of its contention that she acted intentionally. Such facts support Liberty Mutual's contention that its denial of coverage is not actionable under c. 93A. But the standard this court must apply is not whether it

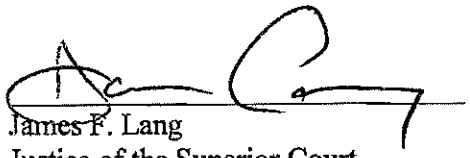
---

[6] Liberty Mutual has cited just once appellate case construing the operative Standard Policy language to permit denial of coverage to an innocent co-insured, *Traders & General Ins. Co. v. Freeman*, 81 F.Supp.2d 1070, 1078-1080 (D. Or.). That decision, which is a clear outlier, relied on a New York decision of the New York Appellate Division that was subsequently overturned by the New York Court of Appeals. *See Lane v. Security Mut. Ins. Co.*, 256 A.D.2d 1100, (N.Y. App. Div. 1998), *rev'd, Lane v. Security Mut. Ins. Co.*, 747 N.E.2d 1270, 1271-1272 (N.Y. 2001) (holding that language in an intentional acts exclusion in an insurance policy that created joint liability on the part of co-insureds impermissibly restricted the coverage mandated by statute (i.e., the New York standard fire insurance policy) and afforded to an innocent co-insured).

views the c. 93A claim as likely to succeed. It concludes that there is a sufficient dispute of fact regarding the propriety of Liberty Mutual's coverage determination so as to merit denial of Liberty Mutual's motion for summary judgment as to the c. 93A counterclaim.

IV. ORDER

For the foregoing reasons, the defendant/counterclaim plaintiff Joel Gonzalez's motion for summary judgment as to liability on his breach of contract counterclaim is **ALLOWED** and the plaintiff/counterclaim defendant Liberty Mutual Insurance Company's motion for summary judgment on its claim for declaratory relief under Count I and on Gonzalez's two counterclaims is **DENIED**.



James F. Lang
Justice of the Superior Court

Dated: June 8, 2017