Lepore Family LLC v Packard Condominium
2025 NY Slip Op 31041(U)
April 1, 2025
Supreme Court, New York County
Docket Number: Index No. 155130/2024
Judge: Lyle E. Frank

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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LEPORE FAMILY LLC,

Plaintiff,

- v -

THE PACKARD CONDOMINIUM, THE BOARD OF MANGERS OF THE PACKARD CONDOMINIUM, DAISY MANAGEMENT LLC,CAPITOL FIRE SPRINKLER CO., INC.,PROGRAM BROKERAGE CORPORATION, ACCIDENT FUND INSURANCE COMPANY OF AMERICA, CHAMPLAIN SPECIALTY INSURANCE COMPANY

Defendant.

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INDEX NO. 155130/2024

MOTION DATE 07/08/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant's motion to dismiss is granted.[1]

Background

Lepore Family LLC ("Plaintiff") owns a condominium unit in the building located at 176 West 86th Street, New York, New York. In March of 2023, defendant Capital Fire Sprinkler Co., Inc. ("Capital Fire") was performing work on a sprinkler system in the building, which ended up flooding portions of the building including Plaintiff's unit. The various parties dispute the cause of the system's failure. Capitol Fire was insured by defendant Champlain Specialty Insurance Company ("Champlain"), with a commercial general liability insurance policy covering certain losses at the condominium. Plaintiff sent a claim to Champlain in June of 2023, which was denied on the grounds that their investigation did not show negligence on the part of Capitol

[1] The Court would like to thank Mingyue Deng and Lingyi Yang for their assistance in this matter.

Fire. Plaintiff brought this underlying proceeding to attempt to recoup damages suffered as a result of the flooding. The eighth, ninth, and tenth causes of action assert claims against Champlain, who brings the present motion to dismiss.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340 (2d Dept. 2003). Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

CPLR § 3211(a)(3) states that a motion to dismiss can be brought when "the party asserting the cause of action has not legal capacity to sue." A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 (1977).

Discussion

The causes of action asserted against Champlain are breach of the insurance contract, breach of the covenant of good faith and fair dealing and bad faith insurance claims practices, and diminution of the unit value. Champlain's main argument for dismissal of the complaint as to them is that Plaintiff lacks standing to sue under Insurance Law § 3420. This law gives injured

plaintiffs standing to sue a tortfeasor's insurance company in order satisfy a judgment, and such judgment is a "statutory condition precedent to a direct suit against the tortfeasor's insurer." *Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, 352 (2004). Once these conditions are satisfied, "the injured party steps into the shoes of the tortfeasor and can assert any right of the tortfeasor-insured against the insurance company." *Id.*, at 355. It is not disputed that Plaintiff has obtained no judgment against the insured (here, Capital Fire) before bringing these claims against Champlain. Neither is it disputed that Plaintiff does not assert that it is an insured party or is acting on behalf of the insured party in the contract or covered by the policies from the insurance contract between Champlain and Capitol Fire.

Plaintiff argues that Insurance Law § 3420 is inapplicable, as they are suing as an intended third-party beneficiary to the insurance policy and not to enforce a judgment. But under the common law, an injured party "has no direct cause of action against the insurer of a tortfeasor", even when they claim to be an intended third-party beneficiary of the insurance policy. *GM Broadcasting, Inc. v. Cornelius Enters., LLC*, 156 A.D.3d 1038, 1039 (3rd Dept. 2017); see also *Clarendon Place Corp. v. Landmark Ins. Co.*, 182 A.D.2d 6, 9 (1st Dept. 1992) (holding that Insurance Law § 3420 compliance is "a condition precedent to the assertion by a tort claimant of any contract claim against the insurer" and that "New York does not permit direct suits against insurers prior to notice of entry of an unsatisfied judgment against an insured"). The law is settled that in order to stand in the shoes of the insured and bring a claim against Champlain, the conditions precedent of Insurance Law § 3420 must be complied with.

Neither has Plaintiff established, even with a favorable motion to dismiss standard, that Champlain has violated an independent duty owed to Plaintiff. The cases cited by Plaintiff dealing with claims for bad faith investigation of the claim involve claims by an *insured* as

against their insurance company or when an injured third party has obtained a judgment against the insured (and thus, steps in to their shoes). *See, e.g., Dawn Frosted Meats, Inc. v. Ins. Co. of N. Am.*, 99 A.D.2d 448, 448 (1st Dept. 1984). A claim for bad faith refusal to provide coverage was developed in order to be "some sort of remedy for aggrieved policyholders" and the duties and obligations of insurance companies to provide coverage under a policy are "contractual rather than fiduciary." *Acquista v. N.Y. Life Ins. Co.*, 285 A.D.2d 73, 81 (1st Dept. 2001).

Allegations that an insurance company's investigation provided "an inadequate basis" to deny a claim is not enough to state a claim sounding in tort. *New York Univ. v. Cont'l Ins. Co.*, 87 N.Y.2d 308, 319 (1995). Nor does allegations of failure to properly investigate and bad-faith denials of claims, even made by the directly insured, suffice to establish an underlying tort duty. *Id*., at 39-20. Even with the benefit of every favorable inference, Plaintiff stands as a stranger to the insurance contract and has not alleged facts that would support a separate duty owed them that Champlain has violated. Plaintiff has not established standing to bring these claims against Champlain. Accordingly, it is hereby

ORDERED that the motion of defendant Champlain Specialty Insurance Company to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

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4/1/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**