

**Jewelers Mut. Ins. Co. v Forty Seventh Fifth Co. LLC**

2025 NY Slip Op 32915(U)

August 18, 2025

Supreme Court, New York County

Docket Number: Index No. 156554/2018

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. SABRINA KRAUS PART 57M**

*Justice*

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JEWELERS MUTUAL INSURANCE COMPANY AS  
SUBROGEE OF JAMES & COMPANY JEWELERS INC.,

Plaintiff,

INDEX NO. 156554/2018

MOTION DATE 03/14/2025

MOTION SEQ. NO. 004

- v -

FORTY SEVENTH FIFTH COMPANY LLC, AND,  
ALLSTATE SPRINKLER CORP.,

Defendants.

**DECISION + ORDER ON  
MOTION**

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FORTY SEVENTH FIFTH COMPANY LLC, AND

Plaintiff,

Third-Party  
Index No. 595884/2020

-against-

ROMAN MALAKOV DIAMONDS LTD, ROMAN MALAKOV  
LLC, ELIZE INTERNATIONAL, INC. D/B/A ELIZE'S DIAMOND  
& FINE JEWELRY, M & G DIAMONDS LLC D/B/A M.G.  
DIAMOND

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122

were read on this motion to/for JUDGMENT - SUMMARY.

**BACKGROUND**

On January 8, 2018, plaintiff's insured, James & Co sustained property damage to its jewelry store located at 580-6 Fifth Avenue and 1-11 West 47th Street in Manhattan due to water leaking from the ceiling of an adjacent tenant's store because of a failure of the fire protection sprinkler system at the building.

Plaintiff, reimbursed James & Co., for its losses and subsequently commenced this subrogation action against defendants, Forty Seventh Fifth Company LLC (“Forty Seventh”) and Allstate Sprinkler Corp (“Allstate”), alleging negligence in causing the water leak.

Pursuant to a decision and order dated February 20, 2025, this Court awarded Forty Seventh summary judgment and dismissed the complaint against said defendant holding that plaintiff’s claims were barred by the waiver of subrogation contained in the lease between James & Co. and Forty Seventh.

Allstate now moves for summary judgment seeking dismissal of the complaint and all crossclaims, and an order granting it reimbursement of defense costs and expenses incurred to date, and contractual indemnification from Forty Seventh.

The motion is denied for the reasons set forth below.

### **DISCUSSION**

Summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact. *Sillman v Twentieth Century–Fox Film Corp.*, 3 NY2d 395, 404 (1957).

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. CPLR 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 (2019). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” *Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 (2016), quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 (1988).

In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” *O’Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 (2017).

***There are Questions of Fact Requiring Denial of Allstate’s Motion as to the Complaint***

The Court finds that Allstate has failed to make out a *prima facie* showing of entitlement to judgment as a matter of law.

Forty Seventh was the landlord and entered a contract with Allstate to perform inspections of the fire suppression sprinkler system at 580 5th Avenue New York, New York 10036-2217 a/k/a 1 West 47th Street New York, New York 10036.

On January 8, 2018, property owned or held by James & Co. was damaged as a result of a freeze and burst of a pipe coupling on that part of the fire suppression sprinkler system located in a ground floor store in the building. The proprietor of the store in question was Roman Malakov Diamonds Ltd. ("Malakov"), another tenant at the building.

A finding of negligence requires a finding that defendant breached a duty it owes to plaintiff. *Kuti v. Sera Sec. Servs.*, 182 A.D.3d 401, 402 (1<sup>st</sup> Dept., 2020). A contractual duty generally does not give rise to third-party liability. However, third-party liability may be imposed where the tortfeasor has entirely displaced the other contracting party's duty to maintain safe premises, or where plaintiff detrimentally relies on the continued performance of the contracting party's duties (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 140 [2002]).

The sprinkler inspection contract at issue here is not the type of comprehensive and exclusive service agreement that would create a duty of care to noncontracting third parties. *All Am. Moving & Storage, Inc. v. Andrews*, 96 A.D.3d 674, 676 (1<sup>st</sup> Dept., 2012). However, given Allstate's admitted failure to inspect the sprinkler system in Malakov’s space, despite its

contractual obligation to perform monthly inspections, issues of fact exist as to whether plaintiff detrimentally relied on Allstate's continued performance of its contractual duties. *Id* at 675.

Allstate concedes it never inspected the pipes in Malakov's space. It asserts it had no obligation to make such an inspection because the pipe was in a concealed space. It bases this conclusion on the testimony of Adam Goodrich, Allstate's owner. The Court finds this testimony is insufficient as a matter of law to conclude that the pipe was in a concealed space and inaccessible.

Additionally, assuming *arguendo* such conclusory testimony was sufficient, Plaintiff has submitted evidence raising an issue of fact on this point.

The Court finds factual issues exist as to whether Allstate was able to gain access to inspect the system and pipes in Malakov's space and whether Allstate thus breached its duty to inspect, and whether the breach was the proximate cause of the damages.

Given that triable issues of fact exist as to Allstate's negligence it is not entitled to summary judgment on its claim for contractual indemnification.

### CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

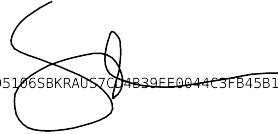
ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of this court.



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**8/18/2025**  
DATE

**SABRINA KRAUS, J.S.C.**

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE