SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **18**

Justice

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AMIRALI VASTANI, RACHNA VYAS,

Plaintiff,

- v -

STATE FARM FIRE & CASUALTY COMPANY,

Defendant.

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INDEX NO. 159834/2021

MOTION DATE 01/21/2025, 03/25/2025, 03/25/2025

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 46, 48, 49, 50, 51

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 52

were read on this motion to/for LEAVE TO FILE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 53

were read on this motion to/for LEAVE TO FILE.

According to the complaint in this action, plaintiffs Amirali Vastani and Rachna Vyas were customers of defendant State Farm Fire & Casualty Company (State Farm). On September 1, 2021, plaintiffs had a State Farm insurance policy for their domicile, located at 21 S. End Ave., Unit 222, New York, NY, 10280 (the Policy and the Property, respectively). Plaintiffs suffered a loss at the Property and State Farm denied their claim, leading to this action sounding in breach of contract. Now, defendant State Farm moves for summary judgment and plaintiffs cross-move for summary judgment. Plaintiffs also move for leave to file a sur-reply[1].

[1] Motion Sequence 002 is a motion to file a sur-reply. Motion Sequence 003 is a corrected notice of motion for the same relief.

Plaintiffs' motion for leave to submit a sur-reply is granted and the Court will consider the submission.

State Farm argues the loss claimed was for water damage caused by a clogged pipe on the plaintiffs' terrace, which caused water to flow into their apartment, an exclusion in the Policy. Plaintiffs contend the flood was caused by a windstorm, Hurricane Ida, which was a covered peril in their policy, and the windstorm caused the terrace drain to be blocked, resulting in the incursion of water into their apartment. Further, the terrace should be considered as part of the resident premises. Plaintiffs argue that if a covered peril (the wind) starts the chain of events (the blocking of the terrace drain), the loss is covered even if there is a later event in the chain (rain and thus flooding) which would not be covered. Further, as far as the policy is ambiguous, that ambiguity should be construed against the insurer.

The standards for summary judgment are well settled. Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established there are no triable issues of fact (*see* CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 329 [1986]; *Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395 [1957]). To prevail, the party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law tendering evidentiary proof in admissible form, which may include deposition transcripts and other proof annexed to an attorney's affirmation (*see Alvarez v Prospect Hosp., supra*; *Olan v Farrell Lines*, 64 NY2d 1092 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Absent a sufficient showing, the court should deny the motion without regard to the strength of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Once the initial showing has been made, the burden shifts to the party opposing the motion for summary judgment to rebut the prima facie showing by producing evidentiary proof

in admissible form sufficient to require a trial of material issues of fact (*see Kaufman v Silver,* 90 NY2d 204, 208 [1997]). Although the court must carefully scrutinize the motion papers in a light most favorable to the party opposing the motion and must give that party the benefit of every favorable inference (*see Negri v Stop & Shop,* 65 NY2d 625 [1985]) and summary judgment should be denied where there is any doubt as to the existence of a triable issue of fact (*see Rotuba Extruders, v Ceppos,* 46 NY2d 223, 231 [1978]), bald, conclusory assertions or speculation and "[a] shadowy semblance of an issue" are insufficient to defeat a summary judgment motion (*S.J. Capalin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *see Zuckerman v City of New York, supra; Ehrlich v American Moninger Greenhouse Mfg. Corp.,* 26 NY2d 255, 259 [1970]). Lastly, "[a] motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin,* 71 AD3d 1112 [2d Dept 2010], quoting *Scott v Long Is. Power Auth.,* 294 AD2d 348 [2d Dept 2002]).

In this case, there is no dispute of fact, only of interpretation of the plaintiffs' insurance policy and whether the flow of water from plaintiffs' balcony into their apartment due to Hurricane Ida on September 1, 2021, is a covered event. During the storm, water was coming in the insured apartment from its balcony. Plaintiff Amirali Vastani noticed the terrace was full of water and debris blocking the drain on the balcony. Vastani cleared the clog and the water drained from the balcony. The applicable insurance policy is supplied as Exhibits 1 and 2 to the Affirmation of Nicholas Graves (NYSCEF Docs. No. 20, 21). Defendant State Farm denied the claim on the grounds it was excluded pursuant to the Policy, Section I- Losses Not Insured, subsection 2(c):

"Water, meaning:

(1) flood;

(2) surface water . . . ;
(3) waves . . . ;
(4) tides or tidal water . . . ;
(5) overflow of any body of water (including any release, escape, or rising of any body of water, or any water held, contained, controlled, or diverted by a dam, levee, dike, or any type of water containment, diversion of flood control device);
(6) spray or surge from [the above];
(7) water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water or sewage that enters into and overflows from within a sump pump, sump pump well, or any other system designed to remove subsurface water that is drained from the foundation area; or
(8) material carried or otherwise moved by any of the water or sewage, as described [above]."

(p 18). Defendant argues the Policy clearly and unambiguously excludes water damage from water or sewer from outside the residence premises plumbing system that enters through sewers or drains. However, from the statement of undisputed material facts provided by the defendant, it does not appear the water entered the plaintiffs' premises through sewers or drains. It seems the drain for the terrace was stopped up by debris from the storm, allowing rainwater to collect in the terrace and enter the apartment. Further, the terrace is part of the dwelling covered by the Policy. The Policy defines "insured location" as "the resident premises" and "any other premises, other structures and grounds used by you as a residence" (*id.* at Definitions 12[a-b]). Plaintiffs' private terrace fits that description. From the statement of facts provided by defendant, it does not appear the water came into the terrace, part of the insured location, from the sewer or drain, but as rainwater that collected there because of the stopped drain. As far as defendant argues the water collecting on the terrace constitutes excluded excess surface water, water collected on a terrace could be considered surface water, "water lying on the surface of the earth but not forming part of a watercourse or lake" (Blacks Law Dictionary, Water- Surface Water; *see also People ex rel. New York Cent. R. Co. v Limburg*, 283 NY 344, 348 [1940]).

Plaintiffs then contend that the wind caused the collection of debris on the terrace which blocked the terrace drain and allowed the water to collect on the terrace, and that the wind was the proximate cause of the damage (*see Tonkin v California Ins. Co. of San Francisco,* 294 NY 326, 329 [1945]). However, the Policy also states:

> "We will not pay for, under any part of this policy, any loss that would not have occurred in the absence of [the water conditions described above]. We will not pay for such loss regardless of: (a) the cause of the excluded event, or . . . (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss"

(Policy, Section I [2], at 17). Even though there was the additional cause of the wind, the language of the Policy is clear that the damage from surface water is not covered.

For the reasons discussed above, it is hereby

ORDERED that plaintiffs' first motion for leave to file a sur-reply (Motion Seq. No. 002) is hereby GRANTED; and it is further

ORDERED that plaintiff's second motion for leave to file a sur-reply (Motion Seq. No. 003) is hereby DENIED AS MOOT; and it is further

ORDERED that defendant's motion for summary judgment (Motion Seq. No. 001) is hereby GRANTED, plaintiffs' cross-motion for summary judgment is DENIED, and the complaint is hereby dismissed.

This constitutes the decision and order of this Court.

10/10/2025
DATE

ALEXANDER M. TISCH, J.S.C.

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