

AIG Prop. Cas. Co. v Massey

2025 NY Slip Op 34775(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 150252/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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AIG PROPERTY CASUALTY COMPANY,
Plaintiff,

- v -

DAVID MASSEY, GABRIELLE MASSEY
Defendant.

-----X

INDEX NO. 150252/2025
MOTION DATE 04/07/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26
were read on this motion to/for DISMISS.

AIG Property Casualty Company a/s/o Howard Chatzinoff and Leslie Chatzinoff (“Plaintiff”) filed this subrogation action against the Chatzinoffs’ upstairs neighbors, David Massey and Gabrielle Massey (“Defendants”), to recover damages allegedly caused by a leak from Defendants’ washing machine. The complaint alleges that the Defendants breached the terms of their lease and that they are therefore contractually obligated to pay for the damages sustained by Plaintiff. Defendants now move to dismiss the complaint pursuant to CPLR § 3211(a)(7), 3211(a)(5), and on the grounds that the lease contains a waiver of subrogation.

LEGAL STANDARD

On a motion to dismiss pursuant to CPLR 3211 (a)(7), the facts alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court’s function is to determine simply whether plaintiff’s facts fit within any cognizable legal theory (*see Leon*, 84 NY2d at 87-88; *Siegmund Straus, Inc. v. East 149th Realty Corp.*, 104

AD3d 401 [1st Dept 2013]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Zurich Am. Ins. Co. v City of New York*, 176 AD3d 1145, 1147 [2d Dept 2019], quoting *EBC I, Inc. v Goldman Sacks & Co.*, 5 NY3d 11, 19 [2005]).

DISCUSSION

Defendants argue that Plaintiff has failed to state a cause of action for breach of contract because the alleged contract is a lease between Defendants and non-party 300 CPW Apartments Corp. (the “Lease”), to which Plaintiff is not a party. In opposition, Plaintiff asserts that the complaint sufficiently alleges a breach of contract claim because the Plaintiff is an intended third-party beneficiary of the Lease.

“One who seeks to recover as a third-party beneficiary of a contract must establish that a valid and binding contract exists between other parties, that the contract was intended for his or her benefit, and that the benefit was direct rather than incidental” (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 353 [1st Dept 2006]). “One is an intended beneficiary if one’s right to performance is appropriate to effect the intention of the parties’ to the contract and either the performance will satisfy a money debt obligation of the promise to the beneficiary, or the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance” (*Roosevelt Islanders for Responsible Southern Dev. V Roosevelt Is. Operating Corp.*, 291 AD2d 40, 57 [1st Dept 2001] [internal quotation marks omitted]). “The best evidence of the contracting parties’ intent is the language of the agreement itself” (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d at 368).

Plaintiff argues that this case is akin to *Edge Mgt. Consulting, Inc. v Blank*, in which an indemnity agreement between an apartment owner and the lessor was found to establish an intent to indemnify other apartment owners in the building (*Id.*). In that case, the Court relied on specific language in the indemnity agreement, which stated that the indemnity applied “to all persons, including, without limitation, the owners of other units in the Building” (*Id.*). Based on this language the Court found that “the agreement evidence[d] an intent to indemnify other unit owners” (*Id.*)

Here, Plaintiff specifically points to two provisions in the Lease, which it argues demonstrate a similar intent to indemnify other unit owners in the building. The first provision is paragraph 18 of the Lease, which provides:

The Lessee shall keep the interior of the apartment . . . in good repair . . . and shall be solely responsible for the maintenance, repair and replacement of . . . washing machines . . . as may be in the apartment . . .

(NYSCEF Doc. No. 20). The second provision is paragraph 15 from the House Rules, which are incorporated into the Lease and states as follows:

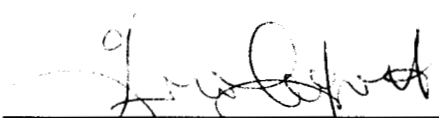
Water closets and other water apparatus in the building shall not be used for any purposes other than those for which they were constructed, nor shall any sweepings, rubbish, rags or any other article be thrown into the water closets. The cost of repairing any damage resulting from misuse of any water closet or other apparatus shall be paid for by the Lessee in whose apartment it shall have been caused.

(NYSCEF Doc. No. 21).

Unlike the clear language from the indemnification agreement in *Edge Management*, neither of these provisions in the Lease demonstrate an intent to benefit anyone other than the building owner, nor do they demonstrate an intent to indemnify the other unit owners. As such, Plaintiff has failed to establish that it is a third-party beneficiary of the Lease and has failed to state a claim for breach of contract.

Accordingly, Defendants' motion to dismiss is granted; and it is further
 ORDERED that Plaintiff's complaint is dismissed; and it is further
 ORDERED that the Clerk of the Court shall enter judgment accordingly.
 This constitutes the decision and order of the Court.

12/10/2025
 DATE



 LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: