

Great N. Ins. Co. v Above Remodeling

2026 NY Slip Op 30284(U)

January 22, 2026

Supreme Court, New York County

Docket Number: Index No. 161753/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

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INDEX NO. 161753/2023

GREAT NORTHERN INSURANCE COMPANY A/S/O
STEVEN KATZ AND RUTH KATZ,

MOTION DATE 01/29/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ABOVE REMODELING, 3 KINGS DEMOLITION LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

Upon the foregoing documents, the motion by proposed intervenors Steven Katz and Ruth Katz (collectively “Katz”) to intervene in this action as plaintiffs, pursuant to CPLR § 1013, is granted.

Background

The complaint alleges that Great Northern Insurance Company (“Great Northern”) insured the Katz’ property at 860 5th Avenue in the County, City, and State of New York. It is also alleged that defendants Above Remodeling (“Above”) and 3 Kings Demolition (“3 Kings”) were performing construction work elsewhere in the building which caused damage to the Katz’ property. Great Northern apparently paid at least a portion of the Katz’ property damage claim and brought this action, as subrogee, to recover at least \$760,000 from Above and 3 Kings, ostensibly the amount it paid on the Katz’ property damage claim at the time the complaint was filed.

The Katz now seek to intervene in this action as plaintiffs to recover their out-of-pocket, uninsured expenses related to the damages allegedly caused by Above and 3 Kings. Great Northern consents to the intervention. Above Remodeling and 3 Kings Demolition oppose intervention, contending that intervention should be denied as the Katz’ property damage claim is time barred and does not relate back to Great Northern’s complaint.¹

¹ Above’s opposition does not cite any authority, and comprises two substantive sentences.

Discussion

CPLR § 1013 governs permissive intervention and provides:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.

In weighing the considerations of commonality, delay, and prejudice outlined in CPLR § 1013, the court also determines whether the proposed intervenor has a "real and substantial interest" in the outcome of the proceedings (*Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197 [1st Dept 2010]; *United Servs. Auto. Assn. v Graham*, 21 AD2d 657 [1st Dept 1964]; *Berkoski v Board of Trustees of Inc. Vil. of Southhampton*, 67 AD3d 840 [2d Dept 2009]).

The Katz' and Great Northern's claims arise out of the same alleged occurrence, thus their claims are dominated by common questions of law and fact. Furthermore, the Katzes, as the insured parties who suffered the alleged property damage and claim out-of-pocket expenses related to same, have a real and substantial interest in the outcome of this proceedings alleging that Above and 3 Kings are responsible for the property damage in their apartment. As a preliminary conference has yet to be held in this matter, intervention will not delay resolution of this matter nor prejudice the substantial rights of any party. Accordingly, intervention will be granted if the Katz' claims are timely.

Property damage claims must generally be brought within three years of accrual of the claim (CPLR § 214[4]). Although the parties have raised the timeliness of the Katz' claim, and dispute whether the claim is beyond the statute of limitations, their papers do not discuss the accrual date of the Katz' claim. A tort claim accrues when the plaintiff suffers damages from the wrong (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132 [2009] [where damages are necessary element of tort claim, claim "is not enforceable until damages are sustained"]; *Kronos, Inc v AVX Corp.*, 81 NY2d 90, 94 [1993] ["The Statute of Limitations does not run until there is a legal right to relief. Stated another way, accrual occurs when the claim becomes enforceable, i.e., when all elements of the tort can be truthfully alleged in a complaint."]; *Bonded Waterproofing Services, Inc. v Anderson-Bernard Agency, Inc.*, 86 AD3d 527, 530 [2d Dept 2011] [insured does not suffer damages as a result of tortfeasor's conduct until the insurer disclaims or denies coverage for such damages]).

Above and 3 Kings argue that the Katz' claim accrued on the date of the alleged property damage, March 15, 2021. Thus, they contend that the instant intervention is untimely as having been filed more than three years after the property damage date. However, their argument is without merit. The Katz' claim accrued on November 22, 2024, when Great Northern denied a portion of their property damage claim, which was the first day they sustained actual damages from the alleged tortious conduct of Above and 3 Kings, and the first day they had a legal right

to relief for those damages from Above and 3 Kings (*Bonded Waterproofing Services, Inc.*, 86 AD3d at 530; *Kronos, Inc.*, 81 NY2d at 94). Until Great Northern denied the Katz’ insurance claim, there was no basis for them to assert a separate cause of action against Above and 3 Kings. Up until November 22,2024, Great Northern, as subrogee of the Katzes, was the only injured party. Therefore, the Katz’ claim for their out-of-pocket property damage (above the amount paid by Great Northern) is timely, as brought within three years of the accrual of their damages on November 22, 2024, and intervention is granted.

Consequently, the parties’ arguments regarding the relation-back doctrine, extension of the statute of limitations under CPLR § 214-c, or intervention as of right are academic. Were the Court to reach these arguments, it would find the Katz’ claim for uninsured property damage is sufficiently related to Great Northern’s claim for insured property damage as they arise from the same occurrence, are based upon the same negligence theory against Above and 3 Kings, and are thus timely under the relation back doctrine (*Schleidt v Stamler*, 106 AD2d 264 [1st Dept 1984] [“very liberal in allowing the addition or substitution of new parties, even after the Statute of Limitations has run, where the cause of action remains unchanged”]). CPLR § 214-c addresses toxic torts and the exposure to toxic substances, not property damage, thus it is inapplicable, as in *Rothstein v Tennessee Gas Pipeline Co*, relied on by the Katzes applying CPLR § 214-c, (204 AD2d 39 [2d Dept 1994] [matter involving personal injury/death and radioactive contrast dye]). The Court would further find intervention as of right, under CPLR § 1012, improperly sought by the Katzes for the first time in reply; the notice of motion and moving papers sought intervention solely by permission under CPLR § 1013.

Accordingly, it is

ORDERED that the motion to intervene is granted and that Steven Katz and Ruth Katz be permitted to intervene in the above-entitled action as party plaintiffs; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding Steven Katz and Ruth Katz thereto as party plaintiffs and listing same as the last plaintiffs in the caption; and it is further

ORDERED that the proposed intervention pleading that accompanied the motion shall be deemed to have been served on defendants upon service of a copy of this order with notice of entry; and it is further

ORDERED that the caption shall be modified to include the intervening parties and shall read:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 31

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GREAT NORTHERN INSURANCE COMPANY a/s/o
STEVEN KATZ and RUTH KATZ, and STEVEN KATZ
and RUTH KATZ, individually,

Plaintiffs,

-against-

ABOVE REMODELING and 3 KINGS DEMOLITION LLC,

Defendants

-----X

; and it is further

ORDERED that the attorney for the intervenor 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 amend their records to reflect such 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); and it is further

ORDERED that defendants shall file amended pleadings within 30 days of service of notice of entry of this order; and it is further

ORDERED that a **Preliminary Conference shall be held on March 11, 2026 at 10:00 am**. The Parties are reminded of the Part Rules, including those regarding the submission of a joint proposed conference order in lieu of an on-person appearance at the conference.

1/22/2026
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: