

**Sharon Realty Corp. v Kookmin Best Ins. Co., Ltd.**

2026 NY Slip Op 30296(U)

January 23, 2026

Supreme Court, New York County

Docket Number: Index No. 652350/2023

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

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

*Justice*

-----X

**INDEX NO. 652350/2023**

SHARON REALTY CORP., SRNY HOLDINGS LLC

**MOTION DATE 09/12/2025**

Plaintiff,

**MOTION SEQ. NO. 003**

- v -

KOOKMIN BEST INSURANCE CO., LTD,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the motion is granted.

**Background**

This action arises out of a dispute over an insurance policy as relating to a loss of heating in 2022. Plaintiffs are the owners of an apartment building that had the gas turned off in October of 2022 after a gas line was punctured by a tenant. The building was covered by an insurance policy that provided coverage for a freeze-up so long as the insured “does their best” to maintain heat in the building. Plaintiffs aver that at the time, they took all necessary steps to maintain heat in the building until a permanent heating system could be installed, including purchasing space heaters. In December, during record-breaking cold temperatures, there was an issue with a frozen pipe due to the failure of one of the space heaters. Defendant, who had issued the relevant insurance policy for the building, sent a field adjuster, Mr. Brennan Walsh of Levine Fidellow, to perform an on-site inspection. In his report to Defendant, Mr. Walsh opined that the cause of the

pipe burst was a failure to maintain heat in the mechanical room. Coverage was denied following this report.

Plaintiffs brought this underlying proceeding in May of 2023, seeking coverage for losses alleged in excess of \$1.6 million. Defendant answered, and discovery is ongoing. During the course of depositions, it has come out that a desk adjuster emailed Mr. Walsh stating that “pipe claims are not covered unless the insured maintains heat or drained the pipes prior to the date of loss.” Furthermore, during deposition Mr. Walsh testified that he was never advised of the “do your best” policy language and he did not review the policy prior to his report.

### **Discussion**

Plaintiffs now move to amend the complaint seeking to add a claim for breach of the covenant of good faith and fair dealing, based on the theory that a failure to advise the investigator of the actual standard from the policy constituted inadequate investigation of the claim. Defendant opposes. They argue that there is no claim under New York law for bad faith and that the proposed claim is redundant of a breach of contract claim. Furthermore, they argue that the full factual record supports the position that they did not act in bad faith in denying the claim. For the reasons that follow, the motion to amend is granted.

### **Relevant Standard of Review**

Leave to amend pleadings is to be “freely given absent prejudice or surprise resulting directly from the delay.” *McCaskey, Davies & Associates, Inc. v. New York City Health & Hospitals Corp.*, 59 N.Y.2d 755, 757 [1983]. The plaintiff seeking to amend does not need to “establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 500 [1st Dept. 2010]. There is a presumption in favor of the validity

of the moving party's claims, and the party opposing the motion must "demonstrate that the facts alleged and relied upon in the moving papers are obviously unreliable or insufficient to support the amendment." *Peach Parking Corp. v. 346 W. 40th St., LLC*, 42 A.D.3d 82, 86 [1st Dept. 2007].

*Breach of the Covenant of Good Faith and Fair Dealing Is Permissible Under the Facts as Alleged Here*

Citing largely to federal cases, Defendant argues that there is no claim under New York law for an insurer's bad faith failure to perform its obligations under an insurance policy. In *Continental*, the First Department noted that "there is no separate cause of action in tort for an insurer's bad faith failure to perform its obligations under an insurance policy." *Continental Cas. Co. v. Nationwide Indem. Co.*, 16 A.D.3d 353, 355 [1st Dept. 2005]. But since then, the First Department has routinely permitted a cause of action for breach of the implied covenant of good faith and fair dealing to stand when it is alleged that the defendant failed to do a fair investigation. *See, e.g., New York Botanical Garden v. Allied World Assur. Co. (U.S.) Inc.*, 206 A.D.3d 474, 475 [1st Dept. 2022] (permitting claim when alleged that the insurer "did not conduct a complete or fair investigation of its claim [and] had no meritorious basis for denying the claim"); *Rockefeller Univ. v. Aetna Cas. & Sur. Co.*, 231 A.D.3d 457, 457 [1st Dept. 2024] (permitting claim when allegations included that the insurer refused "to properly investigate the underlying claims"); *D.K. Prop., Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 168 A.D.3d 505, 505 [1st Dept. 2019] (reinstating a "collateral contract claim for breach of the implied covenant of good faith and fair dealing"); *Starr Indem. & Liab. Co. v. Monte Carlo, LLC*, 232 A.D.3d 502, 502 [1st Dept. 2024] (noting that a claim for breach of the implied

covenant is not duplicative of a breach of contract claim when it relies on different facts and seeks different damages).

Furthermore, in *Bi-Economy*, the Court of Appeals permitted a claim for the breach of the implied duty to continue and noted that “implicit in contracts of insurance is a covenant of good faith and fair dealing, such that a reasonable insured would understand that the insurer promises to investigate in good faith and pay covered claims.” *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 N.Y.3d 187, 193 [2008]. The Court is satisfied that a collateral contract claim for breach of the implied duty of good faith and fair dealing can be validly pled when it is alleged that the insurer failed to investigate the claim in good faith. Furthermore, the Court does not find that the proposed claim here is duplicative of the breach of contract claim, as it involves sufficiently different facts and damages. Therefore, the opposition to the motion to amend fails on this ground.

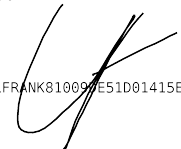
*Defendant’s Remaining Arguments Also Fail to Rebut Presumption of Validity*

Defendant also argues that the motion should be denied because the factual record supports the conclusion that they failed to act in bad faith in investigating Plaintiffs’ claim. But this argument fails to meet the standard necessary to oppose a motion to amend the pleadings, because it essentially asks the Court to assign a certain weight to facts supporting their position while discounting the alleged facts supporting a claim for improper investigation (such as the facts alleged supporting a conclusion that the adjusters were operating under a different, more stringent standard than was contained in the policy). Ultimately, Defendant has failed to show that the proposed amendment would be futile or is palpably without merit. Accordingly, it is hereby

ORDERED that the plaintiffs' motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

20260123123556LFRANK810099E51D01415E9C7A52F13AD1BB9A



1/23/2026

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE