

Greater N.Y. Mut. Ins. Co. v SG Renovation Inc.

2026 NY Slip Op 30418(U)

February 5, 2026

Supreme Court, New York County

Docket Number: Index No. 161432/2024

Judge: James d'Auguste

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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. James E. d'Auguste

PART 55

Justice

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INDEX NO. 161432/2024

GREATER NEW YORK MUTUAL INSURANCE COMPANY
AS SUBROGEE OF 116 EAST 66TH STREET CORP.,

MOTION DATE 02/20/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SG RENOVATION INC., JAMES P. TAYLOR, DANIEL
LANDERS BERKOWITZ,

**DECISION + ORDER ON
MOTION**

Defendants.

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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, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISS.

In this case, plaintiff insurance company Greater New York Mutual Insurance Company (“Insurer” or “Greater New York” or “Plaintiff”) seeks damages arising from a loss of approximately \$400,000 involving fire damage to the premises of insured 116 East 66th Street Corp. (“Insured” or “Landlord”). Plaintiff seeks subrogation from subcontractor SG Renovation Inc. (“SG Renovation” or “Subcontractor” or “Defendant”) based upon its alleged negligence in purportedly causing the fire. Subcontractor moves to dismiss under CPLR 3211 (a) (7) and CPLR 3211. For the reasons stated below, the Court denies the motion.

Applicable Facts

This claim arises out of SG Renovation’s work on apartment 3E at 116 E. 66th St. (the “Apartment”), an apartment owned by 116 E. 66th Street Corp. (“Landlord”) and leased pursuant to a proprietary lease to tenants, defendants James P. Taylor (hereinafter “Taylor”) and Daniel Landers Berkowitz (hereinafter “Berkowitz”).

Prior to January 7, 2024, defendants Taylor and Berkowitz retained SG Renovation to perform certain renovation work in the Apartment.

On January 27, 2004, a fire ensued in the Apartment, resulting in \$401,334.66 in property damage. NYSCEF Doc. 22 (Affirmation of Taylor ¶ 14).

Subcontractor's position rises or falls on its argument that it did not cause the fire. It claims that it did not work in the kitchen of the apartment. There is no dispute that the fire occurred in the kitchen. *See* Fire Department Report (cited *id.* ¶¶15-18). The Fire Department Report identified excessive sawdust as a possible cause of the fire. *Id.* at ¶18.

The crux of defendants' position is contained in NYSCEF Doc. No. 14 (Affirmation of Slawomir Golebiewski ¶¶ 7-8). In these paragraphs, Golebiewski, the CEO of SG Renovation, states that SG Renovation only worked in the two bedrooms of the premises, did not touch the kitchen area, and was no longer present at the worksite at the time of the fire. He also states that SG Renovation only used water-based paint for painting the bedrooms. *Id.* ¶ 9.

Plaintiff asserts that the work performed did, in fact, impact the kitchen area where the fire originated. According to text messages sent on January 19, 2024, between Berkowitz and Albert Feierstein, a Director of SG Renovation, sanding of the floors was done throughout the apartment. NYSCEF Doc. No. 20 (Affirmation of Mary Azaretto ¶ 12). The kitchen floors were covered in an attempt to avoid the accumulation of sawdust in the kitchen resulting from the sanding. *Id.* More specifically, it was confirmed that visqueen (or coverings) would be placed on the kitchen floor once the sanding began. *Id.*

Moreover, several days prior to the fire, Berkowitz mentioned his concern regarding an excessive amount of sawdust throughout the apartment, including the kitchen, to Feierstein. NYSCEF Doc 22 (Taylor Aff. ¶¶22-23). Also, during the course of the work, the SG Renovation

employees stored materials on furniture located in the kitchen, including flammable paint and other materials. *Id.*

Following the fire, a red plastic bucket, filled with rags contaminated with flammable materials, was found in the kitchen melted into a desk that was being stored there. *Id.* at ¶ 24.

Defendants assert that the only company that was present in the apartment between January 24, 2024, and January 26, 2024, was SG Renovation, Inc. and its employees. *Id.* at ¶ 25

Further, defendants assert that no other contractors worked on the apartment during the relevant timeframe and that the tenants had not moved into the apartment during the relevant timeframe. *Id.* ¶¶ 12-13, 25.

The Motion to Dismiss Is Denied

The standard for dismissal on the pleadings is an elevated one. No discovery has been tendered yet. On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v Martinez*, 84 N.Y.2d 83,87-88, 683 N.E.2d 511, 614 N.Y.S.2d 972 (1994); *see also Chapman, Spira & Carson, LLC v. Helix BioPharma Corp.*, 115 A.D.3d 526, 527, 982 N.Y.S.2d 93 (1st Dep’t 2014). However, “factual allegations ... that consist of bare legal conclusions, or that are inherently incredible ... are not entitled to such consideration.” *Mamoon v. Dot Net Inc.*, 135 A.D.3d 656, 658 (1st Dep’t 2016) (quoting *Leder v Spiegel*, 31 A.D.3d 266, 267, 819 N.Y.S.2d 26 (1st Dep’t 2006), *aff’d*, 9 N.Y.3d 836 (2007), cert. denied, 552 U.S. 1257 (2008)). On a motion pursuant to CPLR 3211 (a) (7), “defendants bear the burden of establishing that the complaint fails to state a viable cause of action.” *Connolly v. Long Island Power Auth.*, 30 N.Y.3d 719, 728 (2018). “[A]ffidavits submitted by a defendant ‘will almost never warrant dismissal under CPLR 3211 unless they “establish conclusively that [the plaintiff] has no cause of action.” ’ ” *Sokol v Leader*,

74 A.D.3d 1180, 1182 (2d Dep't 2010) (quoting *Lawrence v Graubard Miller*, 11 N.Y.3d 588, 595 (2008)).

As an initial matter, a subcontractor is subject to a contractually heightened standard whereby it agreed to indemnify for any loss that it caused in any part.

In a January 4, 2024, agreement signed by Albert Feierstein, SG Renovation agreed:

“to defend, indemnify and hold harmless the Indemnified Parties and all other occupants of the building, against any and all liability, including legal costs and expenses on account of damage to property happening in or arising out of or in any way relating to the performance of the work, unless such damage to property was caused by the carelessness or negligence of that Indemnified Party.”¹

Contractor Letter Agreement (cited NYSCEF Doc. No. 26 Azaretto Aff. Ex. F); NYSCEF Doc. No. 22 (Taylor Aff. ¶ 7).

Furthermore, this case is informed by the rule that claims involving negligence generally raise questions of fact, precluding summary judgment, and *a fortiori* barring motions to dismiss. *See Ugarriza v Schmieder*, 46 N.Y.2d 471, 474, 386 N.E.2d 1324, 414 N.Y.S.2d 304 (1979) (“Negligence cases by their very nature do not usually lend themselves to summary judgment”); *Ins. Co. Of Greater NY v Upgrade Contr. Co.*, 2022 N.Y. Misc. LEXIS 242*4 (Sup. Ct. N.Y. County Jan 20, 2022) (“the issue of the cause of the fire is a question of fact for the jury”).

Measured against these standards, it is clear that many disputed issues of fact exist as to whether Subcontractor’s work caused the damage “in any part.”

First, factual issues exist as to the scope of Subcontractor’s work. Subcontractor contracted to work in the full apartment, including the kitchen, where the fire originated. Service Agreement (cited NYSCEF Doc. No. 26 (Azaretto Aff. Ex.F ¶ 4)). Text messages establish that some of its work involved at least some contact with the kitchen. NYSCEF Doc. No. 22 (Taylor Aff. ¶¶ 23-24)

¹ There is no allegation that 116 East 66th Street or the tenants were responsible for the loss.

“the SG Renovation employees stored materials on furniture located in the kitchen, including flammable paint and other materials. . . . Following the fire, a red plastic bucket filled with rags contaminated with flammable materials was found in the kitchen melted into a desk that was being stored there.”).

Second, even if Subcontractor did not work in the kitchen, its work may have created sawdust, which entered the kitchen from other rooms. NYSCEF Doc. No. 20 (Azaretto Aff. ¶ 12) (citing January 19, 2024, Text Message between Berkowitz and Feierstein (“sanding of the floors was done throughout the apartment. The kitchen floors were covered in an attempt to avoid the accumulation of sawdust in the kitchen”)).

The Fire Department Report pointed to sawdust as the cause of the fire. NYSCEF Doc. No. 20 (Taylor Aff. ¶ 17).

Third, the doctrine of res ipsa loquitor supports Plaintiff’s position. Application of res ipsa loquitor requires that the:

(1) event must be of a kind which ordinarily does not occur in the absence of someone’s negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff. . . .

Dermatossian v New York City Tr. Auth., 67 N.Y.2d 219, 492 N.E.2d 1200, 501 N.Y.S.2d 784 (1986). In *Kambat v. St. Francis Hosp.* 89 N.Y.2d 489, 494, 678 N.E.2d 456, 655 N.Y.S.2d 844 (1997), the Court emphasized that res ipsa loquitor requires a fact-intensive “commonsense appraisal of the probative value of the circumstantial evidence.” *Id.* at 498 (citation omitted).

Here, based on the existing record, there is no dispute that SG Renovation had the requisite control. It was the last party with exclusive control over the premises before the fire. The tenants have not yet moved in, and no other company had access to the apartment. SG Renovation was the

only company that was present in the apartment between January 24, 2024, and January 26, 2024. NYSCEF Doc 22 (Taylor Aff. ¶¶12-13, 25).

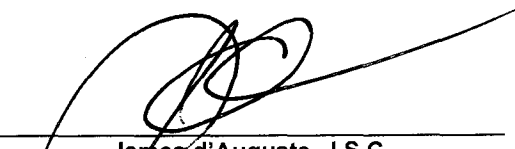
In addition, the other elements for res ipsa loquitor were met. There is at least a factual issue as to whether the fire was a sufficiently extraordinary event, which would not have occurred in the absence of negligence. See NYSCEF Doc 22 ¶¶15-18 (citing Fire Department Report). The Fire Department Report identified excessive sawdust as a possible cause of the fire. Id. at ¶18.

There is no allegation that tenants or the landlord had any responsibility for the fire. At a minimum, defendant has not met its burden of demonstrating that the motion to dismiss should be granted based on the absence of disputed factual issues entitling it to judgment as a matter of law. Res ipsa loquitor is generally a factual issue as to which summary judgment is generally denied. *Marinaro v. Reynolds*, 152 A.D.3d 659, 662, 59 N.Y.S.3d 87 (2d Dep't 2017); *Herbst v. Lakewood Shores Condominium Association*, 112 A.D.3d 1373, 1373-74 (4th Dep't 2013); *Wesco Ins. Co. v. BMoncrieffe*, 2023 NYLJ LEXIS 2684, *6 (Sup. Ct. N.Y. County Oct. 13, 2023) ("there are material issues of fact as to the cause of the fire . . . Therefore, the court cannot determine whether res ipsa loquitor is applicable in this matter and summary judgment is denied").

Accordingly, it is hereby

ORDERED that SG Renovations' motion to dismiss pursuant to CPLR 3211 (a) (7) is denied.

This constitutes the decision and order of the Court.

2/5/2026 DATE			 James d'Auguste, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE