

GN Hospitality, Inc. v Starr Surplus Lines Ins. Co.

2026 NY Slip Op 31541(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 654646/2025

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 654646/2025

GN HOSPITALITY, INC. DBA COMFORT SUITES

MOTION DATE 08/25/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

STARR SURPLUS LINES INSURANCE COMPANY,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Defendant's motion to dismiss Plaintiff's Complaint is granted in part and denied in part.

I. Background

Plaintiff owns property located at 7707 W. Sam Houston Pkway S, Houston Texas, 77072 (the "Property"). Defendant issued Plaintiff an insurance policy (the "Policy") which insured the Property for a term beginning August 29, 2023 through August 29, 2024 (the "Policy Period"). During the Policy Period, the Property was allegedly damaged during a windstorm. Plaintiff submitted a claim to Defendant seeking to recover damages to the Property, and Defendant subsequently conducted inspections of the Property in June and September of 2024. Defendant allegedly admitted to Plaintiff, via letter dated July 24, 2024, that the Property was damaged by wind. But Defendant did not obtain an estimate of damages until November 14, 2024. According to Plaintiff, the estimate provided by Defendant grossly undervalued the damage to the Property.

Now, Plaintiff sues Defendant under several causes of action. Plaintiff seeks a declaratory judgment that the choice of law provision in the Policy, which designates New York law as the

governing law, to be null and void. Plaintiff then asserts several causes of action under Texas law, including breach of contract, violations of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practices Act. Plaintiff also alleges breach of the duty of good faith and fair dealing under Texas law. In the alternative, Plaintiff sues Defendants under New York for breach of contract, violation of New York General Business Law (“GBL”) § 349, and breach of the duty of good faith and fair dealing.

Defendant responds with a pre-answer motion to dismiss, seeking dismissal of the declaratory judgment cause of action, the causes of action brought under Texas law, and the New York claims made pursuant to GBL § 349, and breach of the duty of good faith and fair dealing.¹ Defendant argues that the Texas causes of action and the declaratory judgment cause of action should be dismissed because the choice of law provision, which states New York law applies to any dispute regarding the Policy, is valid and enforceable. Defendant argues the breach of the duty of good faith and fair dealing claim should be dismissed because it is duplicative of the New York breach of contract cause of action and is insufficiently pled. In opposition, Plaintiff argues the choice of law provision is void and therefore the declaratory judgment cause of action and Texas causes of action should survive. Plaintiff also argues the New York claims alleging a violation of GBL § 349 and breach of the duty of good faith and fair dealing are adequately pled. For the following reasons, the motion is granted in part and denied in part.

II. Discussion

A. Declaratory Judgment & Texas Claims

Defendant’s motion to dismiss the declaratory judgment claim and the claims arising under Texas law is granted. The Policy’s choice of law provision reads as follows: “[t]he laws of the

¹ Defendant also seeks dismissal of an alleged claim under, New York Insurance Law § 2601 but this cause of action is not asserted as a standalone cause of action in Plaintiff’s Complaint.

State of New York shall solely and exclusively be used and applied in any such suit, action, or proceeding, without regard to choice of law or conflict of law principles.”

As stated by the Court of Appeals, “courts will generally enforce choice-of-law clauses” and choice-of-law provisions “may reasonably be read as merely a substitute for the conflict-of-laws analysis that otherwise would determine what law to apply to disputes arising out of the contractual relationship” (*see Ministers and Missionaries Ben. Bd. v Snow*, 26 NY3d 466, 470 [2015] quoting *Mastrobuono v Shearson Lehman Hutton, Inc.*, 514 US 52, 59 [1995]). “[W]hen the parties have chosen New York Law, a court may not contravene that choice through common-law conflicts analysis” (*see Petroleos de Venezuela S.A. v MUFG Union Bank, N.A.*, 41 NY3d 462, 475-476 [2024]). This principle is also codified in New York’s statutory framework. Specifically, General Obligations Law § 5-1401 provides that the parties to a contract of \$250,000 or more “may agree that the law of [New York] shall govern their rights and duties in whole or in part, whether or not such contract ... bears a reasonable relation to [New York]” (*see also U.S. Rubber Corporation v Mt. Hawley Ins. Co.*, 2024 WL 5268848 at *2 [SDNY 2024]).

Because the Policy provides for insurance limits exceeding \$250,000, the choice-of-law provision providing that New York law “shall solely and exclusively be used and applied” governs. Therefore, the motion to dismiss the first cause of action seeking declaratory judgment that Texas law applies and the causes of action set forth under Texas law is granted.

B. GBL § 349 & Insurance Law § 2601

The motion to dismiss the GBL § 349 claim is granted. The Complaint alleges a private contract dispute over claims handling and the amount of damages owed under the policy, which is a dispute “unique to the parties rather than conduct that affects consumers at large” (*see Security Mut. Life Ins. Co. of New York v DiPasquale*, 283 AD2d 182 [1st Dept 2001]). Therefore, the GBL

§ 349 claim is dismissed (*see also Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co, Inc.*, 37 NY3d 169, 177 [2021]; *Deutsche Bank National Trust Co. as Trustee for American Home Mortgage Assets Trust 2006-5 v Marino* [1st Dept 2025]).

The Insurance Law § 2601 claim is also dismissed. It is well settled that Insurance Law § 2601 does not give rise to a private cause of action (*see Rocanova v Equitable Life Assur. Soc. of U.S.*, 83 NY2d 603, 614 [1994]; *see also Aetna Cas. & Sur. Co. v ITT Hartford Ins. Co.*, 249 AD2d 241, 242 [1st Dept 1998]).

C. Good Faith & Fair Dealing

However, the motion to dismiss Plaintiff's good faith & fair dealing claim under New York law is denied. This is a pre-answer motion to dismiss, where the factual allegations must be accepted as true and draws all favorable inferences which may flow from the facts alleged (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). Given this standard and the allegations set forth in the Complaint, it is premature to find that Plaintiff has no valid breach of the implied covenant of good faith and fair dealing claim.

Specifically, there are facts alleged that Defendant purposefully has delayed the claims handling process and grossly underestimated the value of property damage. There are also allegations that Plaintiff, the insured, was never provided with certain reports of property inspections, and that Defendant retained investigative companies that have a history of manufacturing reports favorable to the insurer. Moreover, Plaintiff alleges consequential damages flowing from the breach of the covenant of good faith and fair dealing claim because the costs of repairing the damaged building now has increased following the original date of Defendant's adjustment, and has alleged lost revenue which may result in consequential damages above policy limits (*see, e.g. Bi-Economy Market, inc. v Harleysville Ins. Co. of New York*, 10 NY3d 187

[2008]). In any event, whether Plaintiff adequately sustained damages for purposes of stating a breach of the covenant of good faith and fair dealing claim is a fact intensive inquiry requiring discovery, and cannot be resolved on a pre-answer motion to dismiss. Therefore, the motion to dismiss the breach of good faith and fair dealing claim is denied (*see also Rockefeller Univ. v Aetna Casualty & Surety Co.*, 231 AD3d 457 [1st Dept 2024]).

Plaintiff's request seeking leave to amend, which is not sought via notice of motion but is buried in its memorandum of law, is denied (*see, e.g. Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443-444 [1st Dept 2024] [court correctly declined to grant relief not specifically requested in the notice of motion] citing *Caesar v Metropolitan Transp. Auth.*, 229 AD3d 601 [2d Dept 2024]). The request is also defective in that there is no proposed amended pleading in conformance with CPLR 3025(b).

Accordingly, it is hereby,

ORDERED that Defendant's motion is granted to the extent that the declaratory judgment claim, the claims brought under Texas law, the GBL § 349 claim, and the Insurance Law § 2601 claim are dismissed, but the motion to dismiss the claim for breach of the covenant of good faith and fair dealing is denied; and it is further

ORDERED that within twenty days of entry, Defendant shall file an Answer to Plaintiff's Complaint; and it is further

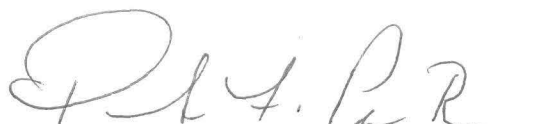
ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail on or before May 12, 2026. If there is a serious discovery dispute requiring a Court conference, the parties shall inform the Court accordingly so an in-person conference may be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court's sponsored ADR program, the parties shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/10/26
DATE


HON. PHAEDRA F. PERRY-BOND, 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