Appellate Division No. 2022-00209 / 2022-00438
New York County Index No. 653590/20

Court of Appeals
of the
State of New York

REGINA FARAGE,
Appellant,

V

ASSOCIATED INSURANCE MANAGEMENT CORP., LEGION INSURANCE GROUP, COLONIA INSURANCE COMPANY, AXA GLOBAL RISKS US INSURANCE COMPANY, GLOBAL FACILITIES, INC., MORSTAN GENERAL AGENCY, INC., NATIONAL GENERAL INSURANCE COMPANY AND NATIONAL GENERAL HOLDINGS CORP.,
Defendants.

TOWER INSURANCE COMPANY OF NEW YORK, AMTRUST FINANCIAL SERVICES, INC., AMTRUST NORTH AMERICA, CASTLEPOINT INSURANCE COMPANY, TOWER RISK MANAGEMENT CORP., TOWER GROUP, INC., TOWER GROUP COMPANIES, E.G. BOWMAN CO., INC., AND MARK LAURIA ASSOCIATES, INC.,

Respondents.

NOTICE OF MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THE NEW YORK STATE COURT OF APPEALS

HugLaw PLLC
MATTHEW C. HUG, ESQ.
PO Box 14263
Albany, New York 12212
(518) 283-3288
matthew.hug@huglaw.com

STATE OF NEW YORK
COURT OF APPEALS

Regina Farage,

Appellant,

-against-

Associated Insurance Management Corp., Legion Insurance Group, Colonia Insurance Company, AXA Global Risks US Insurance Company, Global Facilities, Inc., Morstan General Agency, Inc., National General Insurance Company, and National General Holdings Corp.,

Respondents,

Tower Insurance Company of New York, AmTrust Financial Services, Inc., AmTrust North America, Castlepoint Insurance Company, Tower Risk Management Corp., Tower Group, Inc., Tower Group Companies, E.G. Bowman Co., Inc., Mark Lauria Associates Inc.,

Respondents.

Appellate Division Docket No. 2022-00209 and 2022-00438

New York County Index No. 653590/2020

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

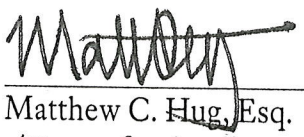
PLEASE TAKE NOTICE that, upon the annexed papers, and the record and briefs, the undersigned will move this Court at 20 Eagle Street, Albany, New York 12207 on the 24th day of April 2023, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 5602(a)(1)(ii) granting Appellant, Regina Farage, leave to appeal to the Court of Appeals. Leave to

appeal is sought from a final decision and order of the Supreme Court, New York County (Engoron, J.) entered July 2, 2021, and the Decision and Order of the New York State Appellate Division First Department dated and entered November 10, 2022, and denial of the motion to reargue dated and entered March 3, 2023 which granted respondents' motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7).

PLEASE TAKE FURTHER NOTICE, that pursuant to 22 N.Y.C.R.R. § 500.21(a) this motion is being submitted on papers only and counsel's personal appearance is neither required nor permitted.

HUG LAW, PLLC

Dated: April 5, 2023
Albany, New York



Matthew C. Hug, Esq.
Attorney for Appellant
PO Box 14263
Albany, New York 12212
(518) 283-3288
matthew.hug@huglaw.com

TO: Kevin F. Buckley, Esq.
Mound, Cotton, Wollan & Greengrass
Attorney for Respondents Tower Insurance Co. of New York, AmTrust Financial Services, AmTrust North America, Castlepoint, Tower Risk Management, Tower Group, Tower Group Co.
One New York Plaza, 44th Floor
New York, New York 10004
(212) 804-4242
kbuckley@moundcotton.com

Howard Kronberg, Esq.
Keidel, Weldon & Cunningham
Attorneys for E.G. Bowman Co. and Mark Lauria Associates
925 Westchester Avenue
White Plains, New York 10604-3507
(914) 948-7000
hkronberg@kwllp.com

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PROCEDURAL HISTORY AND TIMELINESS

On August 4, 2020, Appellant Regina Farage ("appellant") commenced this action in Supreme Court, New York County, by filing a summons with notice against Respondents Associated Insurance Management Corp., Tower Insurance Company of New York, AmTrust Financial Services, Inc., AmTrust North America, Castlepoint Insurance Company, Tower Risk Management Corp., Tower Group, Inc., Tower Group Companies, Legion Insurance Group, Colonia Insurance Company, AXA Global Risks US Insurance Company, Global Facilities, Inc., Morstan General Agency, Inc., E.G. Bowman Co., Inc., and Mark Lauria Associates, Inc. Thereafter, on January 29, 2021, Appellant filed a supplemental summons and complaint (Index Nos. 2022-000209 and 2022-00438) against Respondents: Tower Insurance Company of New York, Tower Risk Management Corp., Tower Group, Inc., Tower Group Companies, AmTrust Financial Services, Inc., AmTrust North America, Inc., Castlepoint Insurance Company, National General Insurance Company, E.G. Bowman Co., Inc., Mark Lauria Associates, Inc. and Global Facilities, Inc. The first and second causes of action, sounding in breach of contract and breach of duty of good faith and fair dealing related to the Tower and AmTrust defendants (hereafter referred to as "Tower/AmTrust"), the third, fourth and fifth causes of action all sounded in breach of contract and were brought against Castlepoint Insurance Company/National General Insurance Company (hereafter "Castlepoint"), E.G. Bowman Co./Global Facilities, Inc. (hereafter "Bowman"), and Mark Lauria Associates, Inc., (hereafter "Lauria") respectively.

On February 9, 2021, respondent Bowman filed a pre-answer motion to dismiss pursuant to CPLR 3211(a)(1) and (7). On February 10, 2021, respondent Lauria filed a pre-answer motion to dismiss pursuant to CPLR 3211(a)(1) and (7) and on March 1, 2021, respondents "Tower/AmTrust" filed a pre-answer motion to dismiss pursuant to CPLR 3211(a)(1) and (7). Appellant responded to those motions and additionally filed cross-motions pursuant to CPLR 1003 and 3025(b) to amend the complaint to add causes of action for negligence against the Lauria and Bowman respondents and to add Technology Insurance Company, Inc., as a party.

By Decision and Order, dated July 2, 2021, the New York County Supreme Court (Engoron, J.) granted the motions to dismiss pursuant to CPLR 3211(a)(1) and (7) as to Tower/AmTrust and Castlepoint and denied all other motions "solely as moot" as a result of the dismissal of the claims against Tower/AmTrust and Castlepoint. The court also denied appellant's motions to amend the complaint. On August 9, 2021, Appellant made a motion to renew and reargue pursuant to CPLR 2221(d) and (e). By Decision and Order, on November 10, 2021, the New York County Supreme Court (Engoron, J.) denied the motion to renew/re-argue.

Appellant timely appealed the Decisions and Orders to the New York State Supreme Court, Appellate Division, First Department. Before that court, appellant raised nine points of argument, assailing the dismissal of the complaint as against all respondents as well as the decision and order denying leave to renew and reargue. By Decision and Order dated and entered November 10, 2022, the New York State, Supreme Court Appellate Division, First Department denied appellant's appeal and affirmed the lower court's decisions. (Docket No. 653590/20). On December 12,

2022, Appellant filed a motion with the New York State Supreme Court Appellate Division First Department seeking leave to reargue and for an order granting permission to the Court of Appeals to hear the appeal from its November 10, 2022 Decision. By Order dated March 2, 2023, the First Department denied Appellant's motions for leave to reargue and permission to appeal to the Court of Appeals. Notice of entry of this Order was electronically filed by respondent Tower/AmTrust on March 7, 2023, as this motion is being filed and served within thirty-five days of that filing it is therefore timely. See, CPLR 5513(b) and (d); CPLR 2103(b)(2).

JURISDICTION

This Court possesses jurisdiction to consider this motion pursuant to CPLR 5602(a)(1)(i). The Order sought to be appealed decided the action by final decision dismissing the complaint in its entirety. Accordingly, the Order is final and can be reviewed by this Court.

QUESTION PRESENTED

Should this Court review the Appellate Division's erroneous articulation and application of the doctrines governing contractual reductions of the statute of limitations for commencing action against an insurance company where the same contract contains a prohibition against the commencement of suit until all repairs are made where the repairs cannot be made within the time constraints in the contractually altered statute of limitations?

Yes. This Court has already conclusively decided this issue in *Executive Plaza, LLC v. Peerless Insurance Co.*, 22 N.Y.3d 511 (2014) but the Appellate Division, First

Department failed to apply it and altered the course of the law as it relates to this bedrock principle grounded in basic consumer fairness.

PRELIMINARY STATEMENT

Appellant respectfully submits this brief and the accompanying documents and exhibits in support of her motion seeking leave to appeal from the Order of the Appellate Division, First Department which affirmed the Decision and Order of the Supreme Court, New York County (Engoron, J.) and dismissed her complaint as against all respondents. Because this Order raises novel questions of statewide importance and creates a conflict with prior holdings of this Court, this Court should grant this motion seeking leave to appeal.

The Appellate Division's Decision and Order, wholly ignoring and fatally undermining this Court's holding in Executive Plaza, LLC v. Peerless Insurance Company, 22 N.Y.3d 511 (2014), erroneously held that a claim against an insurance company could be deemed time-barred by a contractual reduction of the statute of limitations (from 6 years to 2 years) where the claimant was simultaneously contractually barred from making a claim until all repairs were completed where those repairs took longer than two years to complete (largely due to tactics employed by the insurance company to delay completion of those repairs). The only difference between the case presented here and the case decided by this Court in *Executive Plaza* are the names of the parties. The lower court's decision is troubling because it openly rebukes this Court's directly on-point decision and approves of claim limitation periods that expire before suit can be brought. That said, it must be recognized that the facts presented in this matter are egregious insofar as the delay in completing the

repairs can be attributed largely, if not solely, to respondents Tower/AmTrust's conduct.

For the reasons that follow, this Court should grant appellant's motion for leave to appeal.

STATEMENT OF FACTS

Appellant, Regina Farage, is the owner of a six-unit rental property located in Staten Island. (R. 221). On August 4, 2014, appellant's building was consumed by fire resulting in a catastrophic near-total loss. (R. 224). She had been paying insurance premiums, without fail, to Tower/AmTrust since June 2000 for a policy that promised full replacement value coverage and believed that when she needed Tower/AmTrust they would be ready to help. (R. 219). She was sorely mistaken.

Appellant's policy with Tower/AmTrust provided that she could not recover the replacement value of the property until the property has been fully restored. (R. 569). Specifically, the policy stated that Tower/AmTrust "will not pay on a replacement cost basis for any loss or damage until the lost or damaged property is actually repaired or replaced." (R. 569). Simultaneously, the policy limited the statute of limitations to two years.

Appellant immediately notified Tower/AmTrust that she was going to be making a claim for replacement value and desired to restore the building. (R. 220, 224-225). The complex restoration project was beset by delay owing, almost entirely, to maneuvers made by Tower/AmTrust. In that regard, despite having – only the year before – appraised the building and found no deficiency in coverage, when appellant began pursuing a full replacement value recovery Tower/AmTrust suddenly asserted

that the building was underinsured and without prior notice reduced the value of the policy to ~$313,000.00. Tower/AmTrust also frustrated the restoration of the building at every turn. In that regard, they stalled the claims handling process by rotating claims adjusters, insisting that their expert survey the damaged property before it was repaired and then refusing to send anyone, and demanding that vendors of their choosing perform the restoration work and then refusing to pay them when invoiced leading those vendors stop work and file liens against the property. (R. 220, 224-225). With Tower/AmTrust refusing to pay the costs of restoration, appellant was forced to pay for the repairs herself but financing was impossible due to the imposition of the liens against the property. (R. 220, 224-225). After spending $1,300,000.00 and endless frustration with a recalcitrant insurance company, the building was finally restored in July 2020. (R. 224-225).

On August 4, 2020, after Tower/AmTrust steadfastly refused to honor their insurance contract, appellant commenced the within action by summons with notice and subsequently filed a supplemental summons and complaint on January 29, 2021 asserting five causes of action. (R. 217-229). The breach of contract and breach of the duty of fair dealing claims against Tower/AmTrust targeted their refusal to pay the replacement value and sought damages in that amount ($1,300,000) along with the loss of rental revenue due to the prolonged delay as well as the value of lost property. (R. 226-227).

Appellant alleged that "the bad faith conduct of Tower/AmTrust delayed" the restoration of the building, and asserted that "even under the best of circumstances" the restoration "would have been a multi-year process" but due to Tower/AmTrust's

"shamelessly stalling the claims handling process" and "refusing to pay invoices submitted by vendors" resulting in the imposition of liens against the property, the project took far longer to complete than it should have. (R. 220). On March 1, 2021, Tower/AmTrust (and the other respondents) filed a pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7). (R. 53-161, 367-402, 475-537). Tower/AmTrust's motion was supported by a two-page attorney affirmation and a memorandum of law. (R. 475-537). The Tower/AmTrust motion essentially mirrored the motions filed by all other respondents and, for the sake of brevity, this motion shall refer to Tower/AmTrust.

CPLR 3211(a)(7) provides that "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... the pleading fails to state a cause of action." As to this portion of the motion, Tower/AmTrust's memorandum of law (the attorney affirmation being wholly silent on the issue) rested upon a string of black letter principles related to the interpretation of that statute and then, in a bald and conclusory statement, proclaimed that "it is clear that the Plaintiff has failed to allege a cause of action against the respondent's under the policy at law." (R. 527-529).

CPLR 3211(a)(1) provides that a "party may move for judgment dismissing one or more causes of action asserted against him on the ground that a defense is found upon documentary evidence." With respect to this portion of their motion, Tower/AmTrust argued that appellant's claim was time-barred by a provision in the insurance policy that required suit to be commenced within two (2) years of the loss. (R. 529-531). Tower/AmTrust were careful (and not candid) with the court, and did

not mention the condition precedent contained in the insurance policy that precluded the commencement of an action to recover the replacement value until the property was fully restored. (R. 569).

Appellant opposed the motions to dismiss aptly pointing out that the case at bar was directly on point with and controlled by this Court's decision in *Executive Plaza, LLC v. Peerless Ins. Co.* and demonstrated respondents lack of candor with the court. In that regard, appellant showed that the time issue was not as simple as respondents attempted to make it appear. In that regard, appellant pointed to the fact that the insurance contract provided that Tower/AmTrust "will not pay on a replacement cost basis for any loss or damage until the lost or damaged property is actually repaired or replaced." (R. 569). Appellant also highlighted that her allegations that Tower/AmTrust deliberately frustrated her ability to complete the restoration of the building in a more timely manner were not denied by Tower/AmTrust. The reviewing 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 (1994). Because the documentary evidence presented (here the insurance contract) did not "utterly refute plaintiffs' factual allegations"– indeed, the contract's own terms established that the two-year limitation on bringing suit was unenforceable based upon the contractual provision that prohibited any claims until the property was fully restored – appellant argued that basic and fundamental procedural rules related to determining pre-answer motions to dismiss *and* the black-line rule laid out in its easily-understood decision in

Executive Plaza mandated denial of the motions to dismiss, because the complaint amply established through sworn allegations of fact that the restoration could not be completed within two years. (549-577).

In their reply, Tower/AmTrust feebly attempted to distinguish this Court's controlling precedent by stating that there was "no reason that Plaintiff could not have sued within two years" of the date of loss. (R. 588). Notably, Tower/AmTrust did not address the clause contained in the insurance contract - *that they drafted* - that precluded any claims for replacement value until restoration is completed, nor did they offer any denial that they acted intentionally and in bad faith to prevent plaintiff from completing her repairs within the two year window to commence an action. Instead, they continued with their conclusory postulations that ignored not only the rules related to judicial review of pre-answer motions to dismiss but this Court's clear holding in *Executive Plaza*. With respect to the former, Tower/AmTrust even inadvertently acknowledged that they were not entitled to dismissal of the complaint due to the existence of issues of fact when they argued that the complaint should be dismissed because "the Complaint fails to *plausibly* allege that Plaintiff was required to satisfy a condition precedent, but could not - namely rebuilding the Premises - before commencing an action." (R. 587-588). The insertion of the word "plausibly" gave up the ghost; review on a motion to dismiss determines whether an allegation was made at all not whether the allegation will be ultimately proven out. At this stage, the allegations are accepted as true not whether, in the estimation of the moving party, they are plausible or implausible. Coupled with the fact that Tower/AmTrust cutely avoided denying the allegations that they engaged in bad faith

tactics to stall the restoration of the property by repeatedly stating "if the allegation is true" respondent's own motion to dismiss sowed the seeds for what should have been an ignominious denial. (R. 587-588).

Sensing their ship was sinking with the revelation of the clause in the contract appellant abided whose existence Tower/AmTrust hoped to shield from the court, they changed the basis for their motion in a reply. For the first time - knowing that appellant would have no opportunity to respond - respondents asserted that the complaint must be dismissed because appellant did not notify them of her intent to claim a loss on a replacement cost basis within 180 days of the fire. (R. 590-591). Notably, this new argument was only included in a memorandum of law and was not supported by any sworn statement or other documentary proof that appellant did not notify Tower/AmTrust of her intent in this regard. (R. 590-591).

In a written decision, the New York County Supreme Court (Engoron, J.) held that the two year limitation to commence an action contained in the insurance contract barred appellant's claim. In attempting to distinguish this Court's holding in *Executive Plaza* that court committed the cardinal sin of resolving issues of fact. In that regard, despite appellant's clear allegations that she pursued restoration of the property but was beset by delay caused entirely by respondents, the court resolved issues of fact (that were never contested by respondents) in respondents' favor, holding that "plaintiff has failed to demonstrate sufficiently that she attempted to repair the Property within those two years." (R. 29). The court also erred by crediting respondents' argument - raised for the first time in a reply that was not supported by

any sworn allegations of fact – that she failed to submit her claim for coverage within 180 days after the loss. (R. 29-30).

As stated above, the New York County Supreme Court granted the Tower/AmTrust and Castlepoint motion to dismiss and denied the remaining motions, "solely as moot", on account thereof. On August 9, 2021, appellant filed a motion to renew and re-argue. With respect to the 180 day argument made in respondents' reply, appellant pointed out that respondents' argument was based upon a misrepresentation of the terms of the policy. In fact, the 180 day time limitation did not relate to claims for replacement value but for losses measured as actual cash value basis. (R. 727). As this controversy did not deal with actual cash value basis, but replacement value, the 180 day time limitation had no applicability. In addition, appellant provided an affidavit in which she swore that she contacted Tower/AmTrust the day of the loss and on a "nearly daily basis" for the rest of the year keeping them apprised of the progress on repairs to the building and repeatedly advised that she was seeking a claim based upon the replacement cost. (R. 717). Appellant also provided the court with an email from Tower/AmTrust's claims adjuster dated October 31, 2014 (well within the inapplicable 180 time period) acknowledging her claim was for replacement cost. (R. 717, 728). Appellant also provided a series of emails from Tower/AmTrust that demonstrated that they were not going to apply any coinsurance penalty and other acknowledgements that the property was in the process of being restored in furtherance of the restoration value claim. (R. 717-720).

In addition to deflating the 180-day basis for Supreme Court's decision on two fronts, appellant also sought reargument based upon the court's misapprehension of its role on a pre-answer motion to dismiss, and again highlighted that it was improper for the court to require appellant do anything more than make sufficient allegations in the complaint. (R. 786-800). In a brief Decision and Order, the New York County Supreme Court (Engoron, J.) denied the motion to reargue and/or renew. The court dropped any mention of the 180 day notice basis for its prior decision, continued to misapprehend the limitations of its power on a pre-answer motion to dismiss and steadfastly ignored this Court's decision in *Executive Plaza*. (R. 48). In that regard, the court held "the sad but dispositive fact in this litigation is that plaintiff's claim for insurance reimbursement for real estate damaged or destroyed by fire is that plaintiff submitted her claim many years too late...[n]othing in her papers seeking renewal or reargument can overcome this impediment to her claim, or would change this Court's decision and order." (R. 48).

On appeal, the Appellate Division affirmed Supreme Court's Decision and Order based upon the same flawed rationale and upon a misapprehension of the record. In that regard, the Appellate Division enforced the two-year limitation in the contract because "plaintiff here failed to allege that she reasonably attempted to repair the property within the two-year limitations period but was unable to do so." The reality is that appellant, as demonstrated above as well as in the record, more than sufficiently alleged exactly that. It thereafter denied appellant's motion to reargue and for leave to appeal.

ARGUMENT

THIS COURT SHOULD GRANT LEAVE TO APPEAL BECAUSE THE LOWER COURTS' DECISIONS CREATE UNCERTAINTY WITH RESPECT TO BASIC PRINCIPLES GOVERNING PRE-ANSWER MOTIONS TO DISMISS, DEMONSTRATE A HOSTILITY TOWARD THIS COURT'S BINDING, ON-POINT PRECEDENT AND A DISAGREEMENT AMONGST THE APPELLATE DIVISIONS.

The decisions to be reviewed by this Court create uncertainty and demonstrate a judicial hostility toward an easily understood, black-letter holding of this Court that served to ensure the most basic and minimal consumer protection from insurance company contracts that endeavor to ensure that their obligation to pay claims vanish before their client can legally seek them. In reaching those decisions, on this record, the courts abandoned the methodology for determining pre-answer motions to dismiss only to fatally undermine this Court's holding in *Executive Plaza*. See, Executive Plaza, LLC v. Peerless Insurance Company, 22 N.Y.3d 511 (2014). The question in the case at bar is quite simple and requires fundamental alteration of basic principles to avoid its self-evident answer.

First, did the insurance contract that reduced the statute of limitations to sue on a rejected claim also include a clause that forbade commencement of an action until all repairs are completed? And second, did appellant allege in the complaint that efforts were made to make the repairs but that they could not be made within the two-year contractually imposed statute of limitations? If, as here, the answer to both of

those questions is yes, then *Executive Plaza* requires that the motion to dismiss be denied. See, id.

On a pre-answer motion to dismiss, a complaint must be given a liberal construction, all allegations must be accepted as true and the benefit of every possible favorable inference must be provided. The lower courts did none of these things in considering the motion to dismiss. In that regard, the complaint clearly alleged that repairs of the building were undertaken but were delayed by respondents' tactics clearly designed – in retrospect – to extend work beyond the two year period and that the repairs "even under the best of circumstances would have been a multi-year process." (R. 220). The complaint more than amply demonstrated that the repairs required more than two years to complete and worse, that all of the delay was intentionally created by respondents through – as clearly alleged in the complaint – "shamelessly stalling the claims handling process", "passing [appellant] from one adjuster to another, none of whom would take responsibility for processing her claim", refusing "to pay invoices submitted by vendors that it insisted be retained to handle initial remediation work [and] as a result these vendors placed liens on the property, which prevented [appellant] from obtaining much needed financing for the seven figure restoration costs she was saddled with because of Tower/AmTrust refusal to honor its commitment." (R. 220). In addition, appellant alleged that "Tower/AmTrust assigned a succession of claims adjusters, none of whom would take responsibility for the claims handling process. Then it forbade [appellant] from even beginning the remediation until the property was inspected by the insurer's expert, but delayed in sending the so-called expert, who in fact had no understanding

of the engineering challenges posed by the structural damage the Building had suffered." (R. 225). Appellant alleged that "it was not possible for [appellant] to complete the restoration of the property until July 2020." (R. 220). The complaint also alleged that "the resulting [fire] damage was massive and included structural damage caused both by the fire and the water used by the fire department to extinguish it." (R. 224). The proof before the motion court also demonstrated that appellant was prohibited from making a claim for replacement value until the restoration was complete. As a result of these allegations, appellant's more than amply overcame the low bar she had to hurdle to avoid pre-answer dismissal. Not only does a liberal reading of the complaint establish that appellant established that the limitation clause cited by respondents was unreasonable, but the interpretation of the contract, that clearly created a catch-22, must be against respondents as they were the draftspersons. See, D & S Restoration, Inc. v. Wenger Construction Co., Inc., 160 A.D.3d 924, 926 (2nd Dept. 2018) (applying this Court's decision in *Executive Plaza* and declaring two-year contractual limitation on suit unenforceable).

In *Executive Plaza*, this Court resolved a controversy that was *identical* to the one at bar; frankly, given the allegations of bad faith in the case at bar is an even better example for the basis of the holding. In *Executive Plaza*, the U.S. Court of Appeals for the Second Circuit certified a question to the Court of Appeals that queried: "if a fire insurance policy contains a provision allowing reimbursement of replacement costs only after the property was replaced and requiring the property to be replaced as soon as reasonably possible after the loss; and a provision requiring an insured to bring suit within two years after the loss; is an insured covered for replacement costs

if the insured property cannot reasonably be replaced within two years?" See, Executive Plaza, LLC, supra at 517-518. This Court accepted the certification and answered the question in the affirmative, based upon reasoning that is so clear and well-defined that to read it the answer should have seemed self-evident. The Court stated, in a statement that is applicable here, that "the problem with the limitation period in this case is not its duration, but its accrual date. It is neither fair nor reasonable to require a suit within two years from the date of the loss, while imposing a condition precedent to the suit – in this case, completion of replacement of the property – that cannot be met within that two-year period. A limitation period that expires before suit can be brought is not really a limitation period at all, but simply a nullification of the claim." Id. at 518.

The decision in the case at bar stands in direct conflict not only with the holding in *Executive Plaza*, but also a series of other decisions rendered by the Appellate Divisions of the Supreme Court. See, Digesare Mechanical, Inc. v. U.W. Marx, Inc., 176 A.D.3d 1449 (3rd Dept. 2019); Baluk v. New York Cent. Mut. Fire Ins. Co., 126 A.D.3d 1426 (4th Dept. 2015); Bakos v. New York Cent. Mut. Fire Ins. Co., 83 A.D.3d 1485 (4th Dept. 2011).

In *Digesare Mechanical*, the Third Department, under strikingly similar circumstances, applied this Court's holding in *Executive Plaza* and reversed the lower court's dismissal of the plaintiff's complaint as time barred, because the limitation period to commence suit and the conditions precedent to commence an action as provided in the contract had the effect of nullifying a breach of contract claim. See, Digesare Mechanical, Inc., supra. There, the contract with the subcontractor

provided a six month limitation measured from the last day of work on the project site for the commencement of suit for breach of contract claims. The subcontractor commenced suit against the general contractor more than six months after they completed their work, but this owed to the fact that the breach of contract claim did not accrue until long after the six month limitation passed due to the general contractor's failure to pay for the work performed. See, id. Citing to this Court's holding in *Executive Plaza*, the Third Department concluded that the "limitation period" that expired before suit could be brought was not a limitation period but a "nullification of the claim" and reversed the lower court's dismissal of the complaint as the condition precedent rendered the limitation period "unreasonable and unenforceable." Id. at 1452.

In *Baluk*, the Fourth Department reversed the trial court's decision granting the defendant insurance company's motion pursuant to CPLR 3211(a)(1) and (7) based upon the same reasoning as the lower courts in this matter. The Fourth Department held that an issue of fact existed as to whether the plaintiffs were able to satisfy the condition precedent (completing repairs) before the two year contractual limitation on suit expired. That is exactly the case here – at the very least – issues of fact remain as to whether the condition precedent could have been met before the expiration of the time to complete the repairs. Here, respondents have never denied appellant's allegations that repairs could not be made within two years or that the primary reason for the inability to complete those repairs owed entirety to respondents' bad faith conduct.

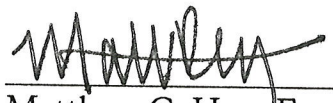
In *Bakos*, the Fourth Department also properly applied the tenets of *Executive Plaza* before that case was decided. There, the insurance company sought to dismiss the plaintiff's complaint pursuant to CPLR 3211(a)(1) and (7) based upon a time limitation in the contract that prohibited suit because plaintiff did not complete all repairs prior to that time. See, Bakos v. N.Y. Cent. Mut. Fire Ins. Co., supra at 1486-1487. The insurance contract in *Bakos* (like the one in the case at bar) did not have any specified deadline for completing the reconstruction of the damaged building, and therefore the Fourth Department held that the "contractual provision imposing a two-year limitation on legal action does not impose a time limit on reconstruction" and therefore the imposition of such a time limitation would have had the effect of nullifying the claims, regardless of when the restoration work actually began. See, id.

These cases establish a single straight-forward approach so as to ensure fairness with respect to contractual limitations to the statute of limitations that are masquerading as clauses that nullify claims. By failing to apply the proper standard created by this Court and followed by the Third and Fourth Departments, the lower court created a conflict between its decision and those prior decisions. If this erroneous decision is not promptly corrected, it will lead to vastly inconsistent and inequitable results for litigants throughout the State and will serve as notice to New Yorkers that they are better off saving their money on insurance premiums and placing it on the roulette table, as there is clearly the same likelihood of getting paid by a casino as an insurance company, but at least with the former you know that when they take your money the game isn't rigged.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that this Court grant its motion for leave to appeal and grant it such other and further relief as this Court deems just and proper.

Dated: April 4, 2023
Albany, New York

By: 

Matthew C. ~~Hug,~~ Esq.
Hug Law, PLLC
PO Box 14263
Albany, New York 12212
(518) 283-3288
matthew.hug@huglaw.com

Supreme Court of the State of New York
Appellate Division, First Judicial Department

PRESENT: Hon. Dianne T. Renwick, Justice Presiding,
Jeffrey K. Oing
Anil C. Singh
Tanya R. Kennedy
Manuel J. Mendez, Justices.

Regina Farage,
Plaintiff-Appellant,

-against-

Associated Insurance Management Corp., et al.,
Defendants,

Tower Insurance Company of New York et al.,
Defendants-Respondents.

Motion No. 2022-04950
Index No. 653590/20
Case Nos. 2022-00209
2022-00438

Plaintiff-appellant having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on November 10, 2022 (Appeal No. 16631-16631A),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 02, 2023

Susanna Molina Rojas
Clerk of the Court

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Renwick, J.P., Oing, Singh, Kennedy, Mendez, JJ.

16631-
16631A

REGINA FARAGE,
Plaintiff-Appellant,

-against-

ASSOCIATED INSURANCE MANAGEMENT CORP., et al,
Defendants,

TOWER INSURANCE COMPANY OF NEW YORK et al,
Defendants-Respondents.

Index Nos. 2022-00209
2022-00438
Case No. 653590/20

Hagan Coury & Associates, Brooklyn (Paul R. Golden of counsel), for appellant.

Mound Cotton Wollan & Greengrass, LLP, New York (Kevin F. Buckley of counsel), for Tower Insurance Company of New York, Amtrust Financial Services, Inc., Amtrust North America, Castlepoint Insurance Company, Tower Risk Management Corp., Tower Group, Inc., Tower Group Companies, respondents.

Keidel, Weldon & Cunningham, LLP, White Plains (Howard S. Kronberg of counsel), for E.G. Bowman Co. Inc. and Mark Lauria Associates, Inc., respondents.

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered on or about July 6, 2021, which granted defendants Tower Insurance Company of New York, AmTrust Financial Services, Inc., AmTrust North America, Castlepoint Insurance Company, Tower Risk Management Corp., Tower Group, Inc., and Tower Group Companies' (Tower defendants) motion to dismiss the complaint in its entirety pursuant to CPLR 3211(a)(1) and (7), and denied as moot defendants E.G. Bowman Co. and Mark Lauria Associates, Inc.'s (broker defendants) motions to dismiss the complaint,

The allegations against the broker defendants are unavailing. The reason that plaintiff did not receive insurance proceeds is not because the terms of her policy were unfavorable but because she failed to sue within the limitations period. Thus, any negligence or breach of contract by plaintiffs' brokers is not the proximate cause of plaintiff's alleged damages (*see US Pack Network Corp. v Travelers Prop. Cas.*, 42 AD3d 330, 331 [1st Dept 2007]; *see also Bachrow v Turner Constr. Corp.*, 46 AD3d 388, 388 [1st Dept 2007]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 10, 2022

Susanna Molina Rojas
Clerk of the Court

Decision & Order, Hon. Arthur F. Engoron, J.S.C. (dated Jul. 2, 2021, entered Jul. 6, 2021) [p. 4-9]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

----------X

INDEX NO. 653590/2020

REGINA FARAGE,

Plaintiff,

- v -

MOTION DATE 02/09/2021, 02/10/2021, 03/01/2021, 03/22/2021

MOTION SEQ. NO. 001 002 003 004

ASSOCIATED INSURANCE MANAGEMENT CORP., TOWER INSURANCE COMPANY OF NEW YORK, AMTRUST FINANCIAL SERVICES, INC.,AMTRUST NORTH AMERICA, CASTLEPOINT INSURANCE COMPANY, TOWER RISK MANAGEMENT CORP., TOWER GROUP, INC.,TOWER GROUP COMPANIES, LEGION INSURANCE GROUP, COLONIA INSURANCE COMPANY, AXA GLOBAL RISKS US INSURANCE COMPANY, GLOBAL FACILITIES, INC.,MORSTAN GENERAL AGENCY, INC.,E.G. BOWMAN, CO., INC.,MARK LAURIA ASSOCIATES, INC.,NATIONAL GENERAL INSURANCE COMPANY, NATIONAL GENERAL HOLDINGS CORP.

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 64, 74, 75, 76, 77, 78, 79, 80, 81, 90, 91, 92, 93, 104, 105

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 54, 55, 56, 65, 82, 83, 84, 85, 86, 87, 88, 89, 94, 95, 96

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 102, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 97, 98, 99, 100, 101, 103

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

Upon the foregoing documents and for the reasons set forth hereinbelow, this Court will dismiss the instant case in its entirety.

Decision & Order, Hon. Arthur F. Engoron, J.S.C. (dated Nov. 10, 2021, entered Nov. 16, 2021) [p. 48]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR ENGORON PART 37
Justice

INDEX NO. 653590/2020
MOTION DATE 08/09/2021
MOTION SEQ. NO. 005

REGINA FARAGE,

Plaintiff,

- v -

ASSOCIATED INSURANCE MANAGEMENT CORP., TOWER INSURANCE COMPANY OF NEW YORK, AMTRUST FINANCIAL SERVICES, INC., AMTRUST NORTH AMERICA, CASTLEPOINT INSURANCE COMPANY, TOWER RISK MANAGEMENT CORP., TOWER GROUP, INC., TOWER GROUP COMPANIES, LEGION INSURANCE GROUP, COLONIA INSURANCE COMPANY, AXA GLOBAL RISKS US INSURANCE COMPANY, GLOBAL FACILITIES, INC., MORSTAN GENERAL AGENCY, INC., E.G. BOWMAN, CO., INC.,MARK LAURIA ASSOCIATES, INC.,NATIONAL GENERAL INSURANCE COMPANY, NATIONAL GENERAL HOLDINGS CORP.

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174

were read on this motion for RENEWAL.

Upon the foregoing documents, it is hereby ordered that plaintiff's motion to renew and/or reargue is denied.

The instant motion to reargue and/or renew is denied. The sad but dispositive fact in this litigation is that plaintiff's claim for insurance reimbursement for real estate damaged or destroyed by fire is that plaintiff submitted her claim many years too late, as this Court explained in its Decision and Order of July 2, 2021, NYSCEF Doc. 113 (et seq.). Nothing in her papers seeking renewal or reargument can overcome this impediment to her claim, or would change this Court's Decision and Order.

11/10/2021
DATE

ARTHUR ENGORON, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION

APPLICATION: [ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER
[ ] SETTLE ORDER [ ] SUBMIT ORDER

CHECK IF APPROPRIATE: [ ] INCLUDES TRANSFER/REASSIGN [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

653590/2020 FARAGE, REGINA vs. ASSOCIATED INSURANCE
Motion No. 005

Page 1 of 1

Background

The Brokers and the Subject Tower Policy

Plaintiff, Regina Farage, asserts, briefly stated, the following. In 1998 plaintiff purchased a multi-unit rental property ("the Property") located at 95-97 Sherman Avenue, Staten Island, New York. In or around 1998, Mark Lauria Associates, Inc. ("Lauria") began acting as plaintiff's insurance broker. Plaintiff requested that Lauria procure an insurance policy for the Property that would cover full repair/replacement cost(s), as plaintiff depended on rental income from the Property. In or around 2000, Lauria obtained a policy from defendant Tower Insurance Company of New York ("Tower," collectively with defendants AmTrust Financial Services and AmTrust North America, "Tower/AmTrust") and assured plaintiff that the subject policy complied with her requests. Plaintiff renewed the subject Tower/AmTrust policy through 2011, when plaintiff replaced Lauria with defendant E.G. Bowman Co. ("Bowman"). Although plaintiff requested that Bowman obtain a policy with a different insurance carrier, Bowman renewed the subject Tower/AmTrust policy through 2014. Bowman, like Lauria, assured plaintiff that the subject Tower/AmTrust policy would cover full replacement cost. Throughout her conversations with Lauria and Bowman, plaintiff communicated that she relied on them to ensure that the subject coverage limit was adjusted annually so that the subject Tower/AmTrust policy would continue to cover the Property for full replacement costs. (NYSCEF Documents 19 and 73.)

Additionally, defendants Castlepoint Insurance Company ("Castlepoint"); National General Insurance Company ("National General Insurance"); and National General Holdings Corp. ("National General Holdings") (Castlepoint, National General Insurance, and National General Holdings, collectively, "Castlepoint/National General") issued plaintiff a homeowner policy, effective June 21, 2014, for the Property. (NYSCEF Documents 19 and 73.)

The August 4, 2014 Fire and Plaintiff's Ensuing Claim

On August 4, 2014, a fire severely damaged the Property. Prior to the fire, plaintiff had apparently never received a copy of the subject Tower/AmTrust policy, despite requesting it from the aforementioned brokers on multiple occasions. Plaintiff learned, supposedly for the first time, that the subject Tower/AmTrust policy contained an underinsured penalty clause, stating that, if at the time of a loss, Tower/AmTrust found that the Limit of Insurance "is less than 80% of the full replacement cost of the property immediately before the loss," it would apply a "co-insurance factor" to reduce coverage below the subject Limit of Insurance." For the approximately fourteen years prior to the fire, pursuant to conversations with the aforementioned brokers Lauria and Bowman, plaintiff understood that "if the Limit of Insurance proved inadequate to repair or replace the property following a loss, Tower/AmTrust would pay up to 25 percent more – not seize on the deficiency as a pretext to make an even smaller payment." Additionally, plaintiff, again apparently for the first time, learned that Tower/AmTrust had not applied the 8% automatic increase to the coverage limit annually even though plaintiff had relied on Lauria and Bowman to ensure that Tower/AmTrust adjusted the subject policy properly. Thus, plaintiff asserts that brokers Lauria and Bowman failed to procure the insurance policy that plaintiff had requested and that they had promised to obtain, as the subject Tower/AmTrust policy does not fully cover plaintiff for the subject loss. Additionally, Castlepoint/National General failed to compensate plaintiff for damaged personal property. (NYSCEF Documents 19 and 73.)

Defendants claim that on July 26, 2012, plaintiff received a copy of the subject Tower/AmTrust policy (NYSCEF Doc. 26), and on June 3, 2013, plaintiff received a copy of the subject policy's renewal certificate (NYSCEF Doc. 27). However, plaintiff disputes receiving said documents, reiterating that she did not receive a copy of the subject Tower/AmTrust policy prior to the fire (NYSCEF Doc. 73).

Meanwhile, Tower/AmTrust's conduct apparently delayed restoring the Property. In 2020, after six years and $1.3 million in costs to plaintiff, the Property was finally fully restored. (NYSCEF Doc 19.) On July 24, 2020, plaintiff submitted an itemized invoice from her contractor (NYSCEF Doc. 73). On September 1, 2020, Tower/AmTrust denied plaintiff's claim (No. 1463955) (NYSCEF Doc. 81).

The Instant Action

On August 4, 2020, plaintiff commenced the instant action, seeking a judgment (1) on her first cause of action, for breach of contract, as against Tower/AmTrust; (2) on her second cause of action, for breach of the covenant of good faith and fair dealing, as against Tower/AmTrust; (3) on her third cause of action, for breach of contract, as against defendants Castlepoint/National General; (4) on her fourth cause of action, for breach of contract, as against defendants Bowman and Global Facilities, Inc. ("Global Facilities"); and (5) on plaintiff's fifth cause of action, for breach of contract, as against defendant Lauria, for compensatory, consequential, and punitive damages in an amount to be determined at trial, plus interest thereon, plus attorney's fees and costs (NYSCEF Doc. 19).

The Instant Motions and Cross-Motion (Sequence Numbers 1 through 4)

Defendant Bowman moves (Motion Seq. No. 001), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities, Inc. and Lauria (NYSCEF Doc. 40).

Plaintiff cross-moves (Motion Seq. No. 001), pursuant to CPLR 3025(b), to amend the instant complaint to add causes of action for negligence as against defendants Lauria and Bowman (NYSCEF Doc. 90).

Defendant Lauria moves (Motion Seq. No. 002), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities and Bowman (NYSCEF Doc. 54).

Defendants Tower Insurance Company of New York; AmTrust Financial Services, Inc.; AmTrust North America; Castlepoint Insurance Company; Tower Risk Management Corp.; Tower Group, Inc.; and Tower Group Companies jointly move (Motion Seq. No. 003), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action in its entirety, with prejudice (NYSCEF Doc. 57).

Plaintiff moves (Motion Seq. No. 004), pursuant to CPLR 1003 and 3025(b), for leave to serve a second supplemental summons and amended complaint to add Technology Insurance Company, Inc. ("TIC") as a defendant to the instant action (NYSCEF Doc. 66).

Discussion

CPLR 3211(a)(1) states that "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... a defense is founded upon documentary evidence."

CPLR 3211(a)(7) states that "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... the pleading fails to state a cause of action."

The subject Tower/AmTrust insurance policy states, in pertinent part, as follows:

> 4. Legal Action Against Us
>
> No one may bring a legal action against us under this insurance unless:
>
> a. There has been full compliance with all of the terms of this insurance; and
>
> b. **The action is brought within 2 years after the date on which the direct physical loss or damage occurred.**

(Emphasis added.) (NYSCEF Doc. 60, at 18.)

The aforementioned two-year limitation period in which plaintiff could commence an action bars plaintiff's claims herein. Plaintiff commenced the instant action six years after the "direct physical loss or damage [here, the fire at the Property] occurred" on August 4, 2014. See John v State Farm Mut. Auto. Ins. Co., 116 AD3d 1010 (2d Dep't 2014) (insurer established summary judgment as a matter of law by submitting a copy of the subject insurance policy demonstrating that a one-year limitation period expired prior to the commencement of the subject action). See also Roberts v New York Prop. Ins. Underwriting Ass'n, 253 AD2d 807, 807 (2d Dep't 1998) ("The phrase ["date of loss"] has been held to refer to the date of the catastrophe insured against, and not the date of the completion of the process to determine the loss.").

Notably, plaintiff does not dispute this time-period limitation. Instead, plaintiff attempts to rely on Executive Plaza, LLC v Peerless Ins. Co., 22 NY3d 511, 518 (2014) (policy's two-year limitation period unenforceable where the "property cannot reasonably be replaced within two years"). However, plaintiff has failed to demonstrate sufficiently that she attempted to repair the Property within those two years. Additionally, as defendants Tower/AmTrust, Castlepoint, Tower Risk Management, Corp., Tower Group, Inc., and Tower Group Companies assert, Executive Plaza is distinguishable from the instant matter. Unlike the insured in Executive Plaza, here, "[p]laintiff did nothing to protect her rights as the suit limitation expired" (NYSCEF Doc. 112, at 10).

Furthermore, plaintiff has failed to demonstrate that she notified Tower/AmTrust and/or any other defendant herein that she intended to submit a claim for coverage within the contractual 180 days after the subject loss, namely by January 31, 2015 (NYSCEF Doc. 112). Plaintiff did

not submit an invoice from her contractor to Tower/AmTrust until July 24, 2020, almost six years after the subject fire at the Property (NYSCEF Doc. 73). In the operative complaint, plaintiff asserts that she "promptly submitted the claim" (NYSCEF Doc. 19, at 9). However, this vague statement is completely insufficient when compared to Tower/AmTrust's assertion that plaintiff did not contact Tower/AmTrust within the necessary 180-day period.

The Court has considered plaintiff's other arguments and finds them to be unavailing and/or non-dispositive.

Therefore, this Court will rule as follows.

The Court will grant the joint motion (Seq. No. 003) by defendants Tower/AmTrust; Castlepoint; Tower Risk Management Corp.; Tower Group, Inc.; and Tower Group Companies, pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant complaint in its entirety, with prejudice.

The Court will deny, solely as moot, defendant Bowman's motion (Seq. No. 001), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities, Inc. and Lauria.

The Court will deny, also solely as moot, defendant Lauria's motion (Seq. No. 002), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities and Bowman. The Court notes in passing that, as plaintiff replaced Lauria with Bowman as plaintiff's insurance broker in 2011, Lauria was not responsible for the amount of coverage that plaintiff had at the time of the subject fire. Furthermore, as plaintiff failed to assert her claim in time, and this Court is precluding her request for insurance reimbursement/coverage, any negligence via the broker(s) would not be a proximate cause of plaintiff's subject loss.

The Court will deny, as moot, plaintiff's cross-motion (Seq. No. 001), pursuant to CPLR 3025(b), to amend the instant complaint to add causes of action for negligence as against defendants Lauria and Bowman.

Likewise, the Court will deny, as moot, plaintiff's motion (Seq. No. 004), pursuant to CPLR 1003 and 3025(b), for leave to serve a second supplemental summons and amended complaint to add TIC as a defendant to the instant action.

Conclusion

Thus, for the reasons stated hereinabove, this Court rules as follows.

The Court hereby grants the joint motion (Seq. No. 003) by defendants Tower Insurance Company of New York; AmTrust Financial Services, Inc.; AmTrust North America; Castlepoint Insurance Company; Tower Risk Management Corp.; Tower Group, Inc.; and Tower Group Companies, pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant complaint of plaintiff, Regina Farage, in its entirety.

The Court hereby denies, solely as moot, defendant E.G. Bowman Co.'s motion (Seq. No. 001), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities, Inc. and Mark Lauria Associates, Inc.

The Court also hereby denies, solely as moot, defendant Mark Lauria Associates, Inc.'s motion (Seq. No. 002), pursuant to CPLR 3211(a)(1) and (7), to dismiss the instant action as against it; and to dismiss the causes of action as against co-defendants AXA Global Facilities and E.G. Bowman Co.

The Court hereby denies, as moot, plaintiff's cross-motion (Seq. No. 001), pursuant to CPLR 3025(b), to amend the instant complaint to add causes of action for negligence as against defendants Mark Lauria Associates, Inc. and E.G. Bowman Co.

The Court also hereby denies, as moot, plaintiff's motion (Seq. No. 004), pursuant to CPLR 1003 and 3025(b), for leave to serve a second supplemental summons and amended complaint to add Technology Insurance Company, Inc. as a defendant to the instant action.

Accordingly, the Clerk is hereby directed to enter judgment dismissing the instant case in its entirety.

7/2/2021
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE