State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 29, 2026 CV-25-0548

SENECA INSURANCE COMPANY INC.,

Appellant-Respondent,

v

COBLESKILL ENTERPRISE, LLP,

Defendant,

and

LINKS INSURANCE SERVICES, LLC,

Respondent-Appellant.

MEMORANDUM AND ORDER

Calendar Date: September 9, 2026

Before: Garry, P.J., Aarons, Pritzker, McShan and Mackey, JJ.

Maguire Tedrick, PLLC, Wantagh (*Katherine Maguire Tedrick* of counsel), for appellant-respondent.

Kaufman Dolowich LLP, White Plains (*Howard S. Kronberg* of counsel), for respondent-appellant.

Pritzker, J.

Cross-appeals from an order of the Supreme Court (James Ferreira, J.), entered March 4, 2025 in Schoharie County, which denied a motion by defendant Links Insurance Services, LLC to dismiss the complaint against it and denied plaintiff's cross-motion for summary judgment.

In 2018, following a fire at its hotel and restaurant complex in the Town of Cobleskill, Schoharie County, defendant Cobleskill Enterprise, LLP (hereinafter defendant) attempted to file a claim for coverage under its commercial property insurance policy. Plaintiff, defendant's insurer, denied the claim on various grounds, including misrepresentations in the policy application as well as in the claim and defendant's breach of the policy's protective safeguards endorsement (hereinafter PSE). When defendant continued to seek coverage for the fire, plaintiff commenced this action for fraud and for declarations that the policy was void and that it did not have to provide coverage for the fire. Defendant joined issue, counterclaimed for breach of the policy and then commenced a third-party action against defendant Links Insurance Services, LLC, the retail broker it worked with to obtain its policy. Defendant asserted that, in the event Supreme Court concluded that plaintiff was not required to cover the fire because the policy had been cancelled due to nonpayment or that the policy was void due to misrepresentations made during the application process, such outcomes would be the result of various breaches of duty and/or negligence by Links; as such, defendant would be entitled to the full amount from Links that it would have received under the policy had it covered the fire and any further expenses it had incurred in reliance on Links' representations. Links joined issue.

Plaintiff thereafter amended the complaint to assert direct claims against Links for fraud and negligent misrepresentation, asserting that Links had filed defendant's claim for coverage of the fire despite knowledge that the policy had actually been cancelled by a third party before the fire occurred. Following joinder of issue on the amended complaint, Links moved to dismiss all claims asserted against it by plaintiff and defendant pursuant to CPLR 3211 (a) (7), and plaintiff cross-moved for summary judgment against defendant declaring that it was not obligated to cover the fire based upon, among other things, plaintiff's failure to maintain smoke detectors in violation of the policy's PSE. During the pendency of the motions, defendant amended its claims to add new allegations of breach of duty by Links, and Links filed an "amended" motion seeking dismissal of same. Supreme Court denied both motions, concluding, as relevant here, that plaintiff had stated claims against Links for fraud and negligent misrepresentation, and that defendant

had stated claims against Links for negligence and breach of duty. The court also concluded that plaintiff's own submissions raised triable issues of fact as to whether defendant breached the PSE, and thus it failed to satisfy its prima facie burden on its cross-motion for summary judgment against defendant. Plaintiff and Links cross-appeal.

First, we turn to plaintiff's assertion that Supreme Court erred in denying its cross-motion for summary judgment against defendant. Specifically, plaintiff contends that it was not obligated to cover the fire because defendant breached the policy's PSE, as asserted in plaintiff's sixth cause of action in its August 2023 amended complaint. "[S]ummary judgment can only be granted if the movant tenders sufficient evidence to demonstrate the absence of any material issues of fact and, once this prima facie showing is made, the non-movant fails to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Maloney v Night Castle Mgt.*, 249 AD3d 1260, 1261 [3d Dept 2026] [internal quotation marks and citations omitted]). As relevant here, "[u]nder New York law, insurance contracts are construed by applying general principles of contract interpretation," and, consequently, "[u]nambiguous provisions . . . must be given their plain and ordinary meaning," with their interpretation posing "a question of law for the court" (*Consolidated Rest. Operations, Inc. v Westport Ins. Corp.*, 41 NY3d 415, 426 [2024] [internal quotation marks and citations omitted]; *see Burlington Ins. Co. v NYC Tr. Auth.*, 29 NY3d 313, 321 [2017]). As also relevant here, Insurance Law § 3106 provides that a warranty "means any provision of an insurance contract which has the effect of requiring, as a condition precedent of the taking effect of such contract or as a condition precedent of the insurer's liability thereunder, the existence of a fact which tends to diminish, or the non-existence of a fact which tends to increase, the risk of the occurrence of any loss, damage, or injury within the coverage of the contract" (Insurance Law § 3106 [a]). "A breach of a warranty shall not avoid an insurance contract or defeat recovery thereunder unless such breach materially increases the risk of loss, damage or injury within the coverage of the contract" (Insurance Law § 3106 [b]). It is the burden of the insurer to establish that the warranty was breached and that such breach was material, with materiality generally constituting a question of fact unless the evidence thereof is "clear and substantially uncontradicted" (*Anjay Corp. v Those Certain Underwriters at Lloyd's of London Subscribing to Certificate No. HN01AAF4393*, 33 AD3d 323, 324 [1st Dept 2006] [internal quotation marks and citations omitted]; *see e.g. 730 J & J v Twin City Fire Ins. Co.*, 293 AD2d 519, 520 [2d Dept 2002]).

At the outset, it is not disputed that the PSE constitutes a warranty, and indeed explicitly requires as a "condition" of coverage that the property maintain operational

smoke detectors in its units and common areas, a fact which would logically reduce the covered risk of loss from fire (*see* Insurance Law § 3106 [a]; *Anghel v Utica Mut. Ins. Co.*, 127 AD3d 897, 899 [2d Dept 2015]; *see also Triple Diamond Café, Inc. v Those Certain Underwriters at Lloyd's London*, 124 AD3d 763, 765 [2d Dept 2015]; *J.A.V. Petroleum Inc. v Norguard Ins. Co.*, 2018 WL 10676901, *6, 2018 US Dist LEXIS 236209, *16-17 [ED NY, June 19, 2018, No. 17-CV-5107(SJF)(ARL)]). Thus, the issue distills to whether plaintiff established that there are no material issues of fact and thus that defendant, as a matter of law, breached the PSE and that such breach materially increased the risk of loss under the policy (*see* Insurance Law § 3106 [b]).

In support of its cross-motion, plaintiff offered a copy of defendant's insurance policy. In the attached PSE, the policy provides that, "[a]s a condition of this insurance, [defendant is] required to maintain" certain protective safeguards, which includes "either operational hard wired or operational battery powered smoke detectors in each unit and common areas" of the premises. The PSE added that plaintiff would "not pay for loss or damage caused by or resulting from fire . . . if, prior to the fire," defendant either "[k]new of any suspension or impairment in any protective safeguard . . . and failed to notify [plaintiff] of that fact" or "[f]ailed to maintain any protective safeguard . . . over which [defendant] had control, in complete working order." Plaintiff also offered documentation showing that defendant had been cited by the Village of Cobleskill in October 2018 for failing to maintain appropriate carbon monoxide detectors and an agreement between defendant and a fire equipment firm signed roughly one month later to "upgrade[ ] and add[ ]" fire alarm system devices "throughout the building."

Plaintiff further submitted the deposition testimony of a technician from the fire equipment firm who explained that, in mid-November 2018, defendant asked his firm to "take a look" at the property's fire alarm system because the Village's "code department was on them" to install carbon monoxide detectors and tie them into the property's fire alarm system. When he inspected the property's fire alarm system, he discovered that it relied on "older detectors," incorporated two different, incompatible types of systems, and could not be modified to incorporate carbon monoxide detectors. As a result, he concluded that "the entire system" needed to be replaced. The technician testified that there were no smoke detectors in the pool area, bowling alley, basement or in the ceiling area of the dining room. Further, although the property's banquet room had heat detectors, it did not have smoke detectors. Similarly, there were only heat detectors, not smoke detectors, in the kitchen. The technician explained that he considered the property's common areas to encompass areas like the pool, hallways and the lobby, as well as areas like the dining room and banquet room if they were open to the public. The

technician testified that the firm was hired to bring defendant's premises into compliance, which included, among other things, installation of a new, unified fire alarm panel, 124 new smoke detectors throughout the property and new, fireproof wiring for the property's detectors. During his work, he discovered that a few smoke detectors in the hallway between the restaurant's kitchen and dining room and "by the pool area" were nonfunctional "dummy detectors." He also discovered that the reporting panel for the restaurant, kitchen, banquet room, bowling alley and some of the property's offices was unable to communicate with the main fire alarm panel in the hotel's lobby, and thus a fire in those areas would not set off the building's fire alarms. The technician recalled that work paused on December 19, 2018, and he learned that there had been a fire on the premises a few days later, on December 24, 2018. Upon inspecting the premises after the fire, he saw smoke damage throughout the premises and extensive burn damage in the property's basement.

Here, plaintiff successfully established both that there were no material issues of fact inasmuch as defendant breached the PSE and that such breach materially increased the risk of loss under the policy as a matter of law. Starting with the text of the PSE, the PSE contains two components relevant here: (1) a requirement that the property feature "operational" smoke detectors and (2) a requirement that those smoke detectors be located in the property's "units and common areas." As neither term is defined in the policy, their definition turns on common usage and "the reasonable expectations of the average insured upon reading the policy" (*Matter of Mostow v State Farm Ins. Cos.*, 88 NY2d 321, 326-327 [1996]). Common usage indicates that an operational smoke detector is "ready for or in condition to undertake a destined function" (Merriam-Webster.com Dictionary, operational [https://www.merriam-webster.com/dictionary/operational]), namely, detecting smoke and alerting nearby occupants to its presence (*see Binh Nguyen v Prime Residential Bronx R&R V LLC*, 307 AD2d 201, 202 [1st Dept 2003]). Here, while plaintiff's proof indicated that the property's guest rooms contained smoke detectors which could have sounded in the event of a fire, other smoke detectors in the vicinity of the restaurant, bowling alley and banquet room might have "lit up" if they detected smoke but would not have triggered any audible alarm, rendering them, in effect, nonoperational. Moreover, some areas – like the banquet room, bowling alley, kitchen and basement – had no smoke detectors at all.

Accordingly, the question of whether the PSE was breached depends on whether any of these spaces constituted common areas of the property. In ordinary usage, common areas constitute spaces that "all tenants may use though the landlord retains control over and responsibility for it" (Black's Law Dictionary [12th ed 2024], common

area; *see also Wynn v T.R.I.P. Redevelopment Assoc.*, 296 AD2d 176, 179 [3d Dept 2002]), or spaces "belonging to or shared by two or more individuals or things or by all members of a group" (Merriam-Webster.com Dictionary, common [https://www.merriam-webster.com/dictionary/common]). Even if there is ambiguity as to whether some of these spaces were common areas, other spaces lacking operational smoke detectors – in particular the bowling alley – were public spaces and thus "clearly . . . common area[s]" within the scope of the PSE (*Turrisi v Ponderosa, Inc.*, 179 AD2d 956, 958 [3d Dept 1992]; *see Hamelin v Town of Chateaugay*, 100 AD3d 1330, 1331 [3d Dept 2012]). Accordingly, plaintiff established defendant's breach of the PSE as a matter of law.

Plaintiff was also required to establish that defendant's breach of the PSE "materially increase[d] the risk of loss, damage or injury within the coverage of the" policy (Insurance Law § 3106 [b]). The absence of operational smoke detectors in a public space is "clearly material to the risk of loss by fire" (*J.A.V. Petroleum Inc. v Norguard Ins. Co.*, 2018 WL 10676901, *7, 2018 US Dist LEXIS 236209, *16) and, indeed, this property ultimately suffered losses directly attributable to fire and smoke, including in areas lacking operational smoke detectors (*compare Nunez v U.S. Underwriters Ins. Co.*, 31 Misc 3d 418, 422 [Sup Ct, Queens County 2011]). Thus, plaintiff established both that the warranty was breached and that such breach was material (*see Star City Sportswear v Yasuda Fire & Mar. Ins. Co. of Am.*, 1 AD3d 58, 62 [1st Dept 2003], *affd* 2 NY3d 789 [2004]; *730 J & J v Twin City Fire Ins. Co.*, 293 AD2d at 520; *compare Anjay Corp. v Those Certain Underwriters at Lloyd's of London Subscribing to Certificate No. HN01AAF4393*, 33 AD3d at 324-325). While defendant did oppose the cross-motion on procedural grounds, it did not make any substantive arguments or offer any proof in opposition to meet its shifted burden. Accordingly, it has "admitted . . . that there exists no material question of fact" and thus Supreme Court should have granted plaintiff's cross-motion (*Springer v Clark Publ. Co.*, 191 AD2d 922, 924 [3d Dept 1993], *lv dismissed* 82 NY2d 706 [1993]; *see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]).

We also find that Supreme Court erred in denying Links' motion to dismiss plaintiff's amended complaint. On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court "must accept the facts alleged in the complaint as true and accord the nonmoving party the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (*Town of Petersburgh v 3M Co.*, 250 AD3d 1509, 1511 [3d Dept 2026] [internal quotation marks and citations omitted]). "Where, as here, evidentiary material is considered on a motion to dismiss, the criterion is

whether the proponents of the pleadings have a cause of action, not whether they have stated one" (*Matter of Upton v Town of Mooers*, 247 AD3d 1297, 1298 [3d Dept 2026] [internal quotation marks, brackets and citations omitted]).

Plaintiff's amended complaint included claims asserting fraud and negligent misrepresentation based upon Links' alleged filing of defendant's claim for coverage of the fire despite knowledge that the policy had actually been cancelled by a third party, Premium Assignment Corporation (hereinafter PAC), before the fire occurred. As relevant here, a claim for fraud requires proof of "a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]; *see Chase v Leidner*, 243 AD3d 976, 977 [3d Dept 2025]). Links is correct that plaintiff's claim of fraud turns on omission; indeed, the complaint specifically casts the fraud at issue as an intentional concealment of information. As a result, to state a claim for fraud, plaintiff needed to allege the existence of a fiduciary duty (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 179 [2011]; *Sutton v Hafner Valuation Group, Inc.*, 115 AD3d 1039, 1041-1042 [3d Dept 2014]), which it did not do. Rather, plaintiff's relationship with Links – as essentially the facilitator of an "arm's length commercial transaction" – is not of a nature that would support any fiduciary duty of disclosure here (*Vestal v Pontillo*, 183 AD3d 1146, 1152 [3d Dept 2020], *lv denied* 36 NY3d 907 [2021]; *see Dae Assoc., LLC v AXA Art Ins. Corp.*, 158 AD3d 493, 494 [1st Dept 2018]; *compare Fox Paine & Co., LLC v Houston Cas. Co.*, 153 AD3d 673, 676 [2d Dept 2017]). As such, plaintiff failed to state a claim for fraud.

As for plaintiff's claim alleging negligent misrepresentation, such a claim requires proof of "(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d at 180 [internal quotation marks and citation omitted]; *see Draina v Town of Ballston*, 250 AD3d 1429, 1432 [3d Dept 2026]). "Where, as here, no privity of contract exists between the parties, [there are] . . . three criteria for imposing liability upon the maker of a negligent misrepresentation: (1) an awareness by the maker of the statement that it is to be used for a particular purpose; (2) reliance by a known party on the statement in furtherance of that purpose; and (3) some conduct by the maker of the statement linking it to the relying party and evincing its understanding of that reliance" (*Greg Beeche, Logistics, LLC v Cross County Constr., LLC*, 210 AD3d 1158, 1161-1162 [3d Dept 2022] [internal quotation marks and citations omitted], *lv denied* 40 NY3d 902 [2023]). Assuming plaintiff adequately alleged a privity-like relationship in that Links

submitted a claim to plaintiff, which plaintiff then relied on to commence an investigation (*see Ryan v Preferred Mut. Ins. Co.*, 38 AD3d 1148, 1149-1150 [3d Dept 2007]; *Mega Group, Inc. v Pechenik & Curro, P.C.*, 32 AD3d 584, 587 [3d Dept 2006]), plaintiff's reliance was not reasonable. To that end, although the reasonableness of reliance is ordinarily a question of fact (*see Bennett v Bennett*, 223 AD3d 1013, 1016 [3d Dept 2024]), plaintiff was a sophisticated entity, and, even presuming that plaintiff did not receive PAC's notice of cancellation, there is no indication why plaintiff, the insurer, who had defendant's contact information and was aware of defendant's relationship with PAC, could not have verified that defendant's policy was in force before commencing its investigation (*see DDJ Mgt., LLC v Rhone Group L.L.C.*, 15 NY3d 147, 154 [2010]; *Piller v Princeton Realty Assoc. LLC*, 173 AD3d 1298, 1302 [3d Dept 2019]; *Lusins v Cohen*, 49 AD3d 1015, 1017 [3d Dept 2008]). As such, plaintiff failed to state a claim for negligent misrepresentation. Accordingly, Supreme Court erred in denying Links' motion to dismiss plaintiff's amended complaint as to those claims asserted against Links.

Finally, we turn to Links' motion to dismiss the third-party action for negligence and breach of duty predicated on misrepresentations in defendant's policy application and failing to ensure that the policy remained in effect or that alternative coverage was obtained.[1] Given our finding that plaintiff does not have to cover the fire and that the insurance policy was void because defendant breached the PSE, the third-party action must be dismissed. Defendant specifically limits its claims against Links to two events: (1) that it is determined by the court that plaintiff does not have to pay the claim because "the policy issued by [plaintiff] was indeed cancelled for non-payment such to justify denial of this claim" or; (2) that it is determined by the court that plaintiff does not have to pay the claim because "there were misrepresentations on the application to justify denial of this claim." As we have determined above, plaintiff does not have to pay this claim for a different reason, which is unrelated to actions undertaken by Links and is not asserted in the amended third-party cause of action. Accordingly, Links' motion to dismiss the third-party amended complaint must be granted. Any remaining contentions not specifically discussed have been carefully examined and found to be lacking in merit.

Garry, P.J., Aarons, McShan and Mackey, JJ., concur.

[1] In determining these issues, we reviewed defendant's memorandum of law filed in Supreme Court.

ORDERED that the order is reversed, on the law, without costs; motion of defendant Links Insurance Services, LLC granted, amended complaint as against said defendant dismissed; third-party amended complaint dismissed; plaintiff's motion granted, summary judgment awarded to plaintiff on its sixth cause of action in its August 2023 amended complaint, and it is declared that plaintiff is not obligated to provide coverage for the damages sustained by defendant Cobleskill Enterprise, LLP as a result of the December 23, 2018 fire.

ENTER:



Robert D. Mayberger
Clerk of the Court