SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

S & M Bronx Inc. v. Diversified Planning Brokerage LLC

2026 NY Slip Op 03247 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 816715/21; Appeal No. 6688; Case No. 2025-07912 · Decided May 21, 2026

SUMMARY

The Appellate Division, First Department, modified an order denying insurance brokers' motion for summary judgment. The court held that factual issues remained regarding a special broker-client relationship, responsibility for policy renewal, and proximate causation, but dismissed the claims for breach of fiduciary duty and detrimental reliance as duplicative of the negligence claim.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Mendez, J.; Rodriguez, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 21, 2026
DOCKET	Index No. 816715/21; Appeal No. 6688; Case No. 2025-07912
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion for summary judgment in an action alleging insurance-broker malpractice, breach of fiduciary duty, and detrimental reliance.
STANDARD OF REVIEW	Summary judgment is appropriate only where the movant establishes entitlement to judgment as a matter of law; factual issues must be resolved by the factfinder. The appellate court reviewed the denial of summary judgment on the negligence claim and the dismissal of duplicative causes of action as a matter of law.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Diversified Planning Brokerage LLC et al. v. S & M Bronx Inc. et al.

TOPICS

professional negligence · insurance · negligence · standard of review · appellate procedure

PRACTICE AREAS

insurance broker malpractice | professional negligence | summary judgment

QUESTIONS PRESENTED

1. Whether issues of fact existed as to whether the insurance brokers had a special relationship with plaintiffs that created an additional duty of advisement.
2. Whether issues of fact existed as to whether defendants were responsible for managing the policy-renewal process and whether their inaction proximately caused plaintiffs' injuries.
3. Whether the breach-of-fiduciary-duty and detrimental-reliance causes of action were duplicative of the negligence cause of action.

HOLDINGS

1. Summary judgment was properly denied on the negligence claim because the evidence raised issues of fact concerning whether the parties had a special relationship exceeding a traditional broker-client relationship. A course of dealing over an extended period that would put objectively reasonable insurance agents on notice that their advice was being sought and specially relied upon may create an additional duty of advisement even without a specific request from the insured.
2. Summary judgment was properly denied because issues of fact existed concerning which party was responsible for managing the renewal process and whether defendants' failure to renew proximately caused plaintiffs' injuries.
3. The second cause of action for breach of fiduciary duty and the third cause of action for detrimental reliance were properly dismissed as duplicative of the negligence cause of action.

KEY QUOTATIONS

> *“In such a situation where "there is a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specially relied on," a special relationship may arise thereby "creating an additional duty of advisement" even in the absence of a specific request from the insured to the broker”* ([*1])

FACTUAL BACKGROUND

Plaintiffs alleged that defendants, their insurance brokers, negligently allowed plaintiffs' liability coverage to lapse. Plaintiffs testified that defendants advised them on insurance issues, handled audits and policy changes, and had worked with them for more than a decade across six businesses. The parties disputed whether defendants were responsible for managing the policy-renewal process and whether their failure to renew proximately caused plaintiffs' injuries.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied defendants' motion for summary judgment. The Appellate Division unanimously modified the order by granting the motion as to the second and third causes of action and otherwise affirmed.

DISPOSITION

other

CASES CITED

- Voss v Netherlands Ins. Co., 22 NY3d 728, 735 [2014]
- Abetta Boiler & Welding Serv., Inc. v American Intl. Specialty Lines Ins. Co., 76 AD3d 412, 413 [1st Dept 2010]
- Murphy v Kuhn, 90 NY2d 266, 270 [1997]
- Heard v City of New York, 82 NY2d 66, 72 n.* [1993]

OPINION

PER CURIAM.

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Plaintiffs testified that, among other things, defendants advised plaintiffs regarding insurance issues, addressed plaintiffs' audits, and handled insurance policy changes (<i>see</i> <i>Voss v Netherlands Ins. Co.</i>, 22 NY3d 728, 735 [2014];<i> Abetta Boiler & Welding Serv., Inc. v American Intl. Specialty Lines Ins. Co.</i>, 76 AD3d 412, 413 [1st Dept 2010]).

Although defendants' principal testified that the insurance carrier did not contact defendants during the audit that eventually led to plaintiffs' coverage being dropped, one of the individual plaintiffs testified that he had worked with defendants for more than a decade, used defendants for all six of his businesses, and that he would send everything in his possession relating to insurance to defendants, who would in turn take care of it, including when plaintiffs received audit requests from the insurance carrier.

In such a situation where "there is a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specially relied on," a special relationship may arise thereby "creating an additional duty of advisement" even in the absence of a specific request from the insured to the broker (<i>Voss</i>, 22 NY3d at 735).</p> <p>There are also issues of fact concerning which party was responsible for managing the renewal process as defendants' involvement with previous audits may evince a course of conduct demonstrating that the renewals were in fact defendants' responsibility (<i>see Murphy v Kuhn</i>, 90 NY2d 266, 270 [1997]).

The record evidence does not disprove as a matter of law that defendants' inaction in renewing the policy did not proximately cause plaintiffs' injuries (<i>see Heard v City of New York</i>, 82 NY2d 66, 72 n * [1993]).</p> <p>However, the second and third causes of action, for breach of fiduciary duty and detrimental reliance, should be dismissed as duplicative of the negligence cause of action. </p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: May 21, 2026</p> </div>

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. S & M Bronx Inc. et al, Plaintiffs-Respondents, v Diversified Planning Brokerage LLC et al., Defendants-Appellants. Decided and Entered: May 21, 2026 Index No. 816715/21|Appeal No. 6688|Case No. 2025-07912| Before: Kennedy, J.P., Scarpulla, Mendez, Rodriguez, Rosado, JJ. Miranda Slone Sklarin Verveniotis, Mineola (Maurizio Savoiardo of counsel), for appellants.

Ginsburg & Misk LLP, Queens Village (Gerard N. Misk of counsel), for respondents. [*1] Order, Supreme Court, Bronx County (Myrna Socorro, J.), entered November 25, 2025, which denied defendants' motion for summary judgment, unanimously modified, on the law, the motion granted to the extent of dismissing the second and third causes of action, and otherwise affirmed, without costs.

In this action for malpractice, plaintiffs allege that defendants insurance brokers negligently allowed plaintiffs' liability coverage to lapse, that defendants breached their fiduciary duty to plaintiffs, and that plaintiffs detrimentally relied upon defendants' insurance expertise and knowledge. Supreme Court properly denied summary judgment on plaintiffs' negligence claim because there are issues of fact concerning whether the parties had a special relationship, exceeding that of a traditional broker-client relationship.

Plaintiffs testified that, among other things, defendants advised plaintiffs regarding insurance issues, addressed plaintiffs' audits, and handled insurance policy changes (see Voss v Netherlands Ins. Co., 22 NY3d 728, 735 [2014]; Abetta Boiler & Welding Serv., Inc. v American Intl. Specialty Lines Ins. Co., 76 AD3d 412, 413 [1st Dept 2010]).

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There are also issues of fact concerning which party was responsible for managing the renewal process as defendants' involvement with previous audits may evince a course of conduct demonstrating that the renewals were in fact defendants' responsibility (see Murphy v Kuhn, 90 NY2d 266, 270 [1997]).

The record evidence does not disprove as a matter of law that defendants' inaction in renewing the policy did not proximately cause plaintiffs' injuries (see Heard v City of New York, 82 NY2d 66, 72 n * [1993]). However, the second and third causes of action, for breach of fiduciary duty and detrimental reliance, should be dismissed as duplicative of the negligence cause of action.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 21, 2026