

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

State Farm Fire & Casualty Company v. Dan Heller Plumbing and
Heating, Inc.

2025 NY Slip Op 06635 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2025) · No. 2022-06670 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department, affirmed an order granting summary judgment to Brownstones Coffee, Inc. and Country Fare Market, Inc. in a subrogation action arising from a commercial-property fire. The court held that State Farm was judicially estopped from challenging waiver-of-subrogation clauses because its subrogor, New Age Management, LLC, had previously relied on those clauses in related actions. The court also concluded that the defendants established that the leases' waiver provisions barred State Farm's claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; William G. Ford, J.; Helen Voutsinas, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	November 26, 2025
DOCKET	2022-06670
DISPOSITION	affirmed
PROCEDURAL POSTURE	State Farm appealed from an order granting Brownstones Coffee, Inc. and Country Fare Market, Inc. summary judgment dismissing the third amended complaint against them and denying State Farm's cross-motions for summary judgment dismissing their waiver-of-subrogation affirmative defenses.
STANDARD OF REVIEW	On a summary-judgment motion, the moving party must establish prima facie entitlement to judgment as a matter of law; if that showing is made, the opposing party must raise a triable issue of fact. The court may deny a cross-motion based on the movant's failure to establish

	prima facie entitlement without regard to the sufficiency of the opposition papers.
PRECEDENTIAL VALUE	published
PARTIES	State Farm Fire & Casualty Company v. Brownstones Coffee, Inc., Country Fare Market, Inc.

TOPICS

subrogation waiver summary judgment civil procedure appellate procedure

PRACTICE AREAS

insurance subrogation commercial leasing summary judgment civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether State Farm was judicially estopped from contesting the enforceability of waiver-of-subrogation clauses after its subrogor, New Age, successfully relied on those clauses in related actions within the same proceeding.
2. Whether Brownstones and Country Fare were entitled to summary judgment dismissing State Farm's subrogation claims based on the waiver-of-subrogation clauses in their leases with New Age.
3. Whether State Farm established prima facie entitlement to summary judgment dismissing the tenants' affirmative defenses based on the waiver-of-subrogation clauses.

HOLDINGS

1. State Farm was precluded by judicial estoppel from contesting the enforceability of the waiver-of-subrogation clauses because its subrogor, New Age, had previously advanced and prevailed on the position that the same clauses barred related subrogation actions.
2. Brownstones and Country Fare were entitled to summary judgment dismissing State Farm's third amended complaint because the waiver-of-subrogation clauses in their respective leases with New Age barred the claims.
3. An insurer asserting subrogation rights can recover only to the extent its insured could have recovered and remains subject to defenses that could have been asserted against the insured.

KEY QUOTATIONS

*“Under the doctrine of judicial estoppel, or estoppel against inconsistent positions, a party is precluded from inequitably adopting a position directly contrary to or inconsistent with an earlier assumed position in the same proceeding” (*1)*

*“The twin purposes of the doctrine are to protect the integrity of the judicial process and to protect judicial integrity by avoiding the risk of inconsistent results” (*1)*

*“An insurer can only recover if the insured could have recovered and its claim as subrogee is subject to whatever defenses the third party might have asserted against its insured” (*2)*

FACTUAL BACKGROUND

A fire occurred in August 2015 at commercial premises owned by State Farm's subrogor, New Age Management, LLC, and leased by Brownstones Coffee, Inc. and Country Fare Market, Inc. State Farm paid insurance benefits to New Age and pursued subrogation claims against the tenants. In related joined actions, New Age successfully relied on waiver-of-subrogation clauses in its leases with the tenants to obtain dismissal of claims brought by the tenants' insurers; State Farm then took the contrary position that those same clauses were unenforceable.

PROCEDURAL HISTORY

State Farm brought a subrogation action to recover insurance benefits paid to its insured, New Age Management, LLC, after a fire at commercial premises leased by Brownstones and Country Fare. Related subrogation actions brought by the tenants' insurers were joined with State Farm's action. The Supreme Court granted New Age summary judgment in those related actions based on waiver-of-subrogation clauses, then granted Brownstones and Country Fare summary judgment against State Farm and denied State Farm's cross-motions. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Cobenas v. Ginsburg Dev. Cos., LLC, 133 AD3d 812, 813
- McEvoy v. McEvoy, 219 AD3d 1513, 1516
- Cussick v. R.L. Baxter Bldg. Corp., 228 AD3d 614, 616
- McGlynn v. Burns & Harris, Esq., 223 AD3d 733, 735
- Flanders v. E.W. Howell Co., LLC, 193 AD3d 822, 823-824
- Riconda v. Liberty Ins. Underwriters, Inc., 187 AD3d 1081, 1082
- Matter of Hartsdale Fire Dist. v. Eastland Constr., Inc., 65 AD3d 1345, 1346
- H & R Block Bank v. Page, 199 AD3d 780, 783
- Matter of Arriaga v. Dukoff, 123 AD3d 1023, 1025-1026, affd 28 NY3d 1
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 852
- Westport Ins. Co. v. Altermec Energy Conservation, LLC, 82 AD3d 1207, 1209
- Morin v. Morin, 197 AD3d 1171, 1173

OPINION

PER CURIAM.

State Farm Fire & Cas. Co. v Dan Heller Plumbing & Heating, Inc. (2025 NY Slip Op 06635)
State Farm Fire & Cas. Co. v Dan Heller Plumbing & Heating, Inc. 2025 NY Slip Op 06635
Decided on November 26, 2025 Appellate Division, Second Department Published by New York
State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and
subject to revision before publication in the Official Reports.

Decided on November 26, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate
Division, Second Judicial Department HECTOR D. LASALLE, P.J. WILLIAM G. FORD HELEN
VOUTSINAS CARL J. LANDICINO, JJ. 2022-06670 (Index No. 611801/16) [*1]State Farm Fire
& Casualty Company, etc., appellant, v Dan Heller Plumbing and Heating, Inc., et al., defendants,
Brownstones Coffee, Inc., et al., respondents.

Law Offices of Stuart D. Markowitz P.C. (Thomas Torto, New York, NY, of counsel), for
appellant. Farber Brocks & Zane LLP, Garden City, NY (Alyssa L. Herms of counsel), for
respondent Brownstones Coffee, Inc. Barbiero, Bisch, O'Connor & Commander LLP, Melville,
NY (Kathleen Commander of counsel), for respondent Country Fare Market, Inc. DECISION &
ORDER In a subrogation action to recover insurance benefits paid by the plaintiff under a certain
insurance policy to the plaintiff's insured, the plaintiff appeals from an order of the Supreme Court,
Suffolk County (David T. Reilly, J.), dated July 18, 2022.

The order, insofar as appealed from, granted those branches of the separate motions of the
defendant Brownstones Coffee, Inc., and the defendant Country Fare Market, Inc., which were for
summary judgment dismissing the third amended complaint insofar as asserted against each of
them and denied the plaintiff's separate cross-motions for summary judgment dismissing those
defendants' affirmative defenses asserting that the third amended complaint is barred insofar as
asserted against each of those defendants by waiver of subrogation clauses contained in certain
leases.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs. In August
2015, a fire occurred at commercial premises owned by the plaintiff's subrogor, New Age
Management, LLC (hereinafter New Age), and leased by the defendant Brownstones Coffee, Inc.
(hereinafter Brownstones), and the defendant Country Fare Market, Inc. (hereinafter Country
Fare).

Thereafter, the plaintiff commenced this subrogation action against Country Fare and
Brownstones, among others, to recover insurance benefits it paid under a certain insurance policy
to its insured, New Age. Several other related actions were commenced, including a subrogation
action brought by Brownstones' insurer, Utica First Insurance Company (hereinafter Utica First),
against New Age, among others, and a subrogation action brought by Country Fare's insurer,
Graphic Arts Mutual Insurance Company (hereinafter Graphic Arts), against New Age, among
others.

These related actions eventually were joined for all purposes with this action. New Age separately moved for summary judgment dismissing the complaints of Utica First and Graphic Arts insofar as asserted [*2]against it in the joint actions, arguing that the waiver of subrogation clauses in its respective leases with Brownstones and Country Fare precluded the actions brought by Utica First and Graphic Arts.

In an order dated July 12, 2022, the Supreme Court granted New Age's separate motions for summary judgment dismissing the complaints of Utica First and Graphic Arts insofar as asserted against it, determining that the actions were precluded by the waiver of subrogation clauses contained in the relevant leases. Brownstones and Country Fare separately moved, among other things, for summary judgment dismissing the plaintiff's third amended complaint insofar as asserted against each of them.

Brownstones and Country Fare argued, inter alia, that the third amended complaint was barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age. Subsequently, the plaintiff separately cross-moved for summary judgment dismissing the affirmative defenses of Brownstones and Country Fare asserting that the third amended complaint was barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age.

In an order dated July 18, 2022, the Supreme Court, among other things, granted those branches of the separate motions of Brownstones and Country Fare and denied the plaintiff's separate cross-motions. The plaintiff appeals.

The Supreme Court properly granted those branches of the motions of Brownstones and Country Fare which were for summary judgment dismissing the third amended complaint insofar as asserted against each of them. "Under the doctrine of judicial estoppel, or estoppel against inconsistent positions, a party is precluded from inequitably adopting a position directly contrary to or inconsistent with an earlier assumed position in the same proceeding" (*Cobenas v Ginsburg Dev.*

Cos., LLC, 133 AD3d 812, 813 [internal quotation marks omitted]; see *McEvoy v McEvoy*, 219 AD3d 1513, 1516). The doctrine further "precludes a party who assumed a position in one legal proceeding and prevailed in maintaining that position from assuming a contrary position in another proceeding simply because the party's interests have changed" (*Cussick v R.L.*

Baxter Bldg., Corp., 228 AD3d 614, 616 [internal quotation marks omitted]; see *McGlynn v Burns & Harris, Esq.*, 223 AD3d 733, 735). "The twin purposes of the doctrine are to protect the integrity of the judicial process and to protect judicial integrity by avoiding the risk of inconsistent results" (*Cussick v R.L. Baxter Bldg. Corp.*, 228 AD3d at 616 [internal quotation marks omitted]; see *Flanders v E.W.*

Howell Co., LLC, 193 AD3d 822, 823). Here, the plaintiff's subrogor, New Age, argued in support of its motions for summary judgment against Utica First and Graphic Arts that the joint actions were barred insofar as asserted against it by the same waiver of subrogation clauses at issue in the subject motions and cross-motions.

The plaintiff's position is inconsistent with that previously advanced by New Age, its subrogor, and is, therefore, precluded by the doctrine of judicial estoppel. Moreover, contrary to the plaintiff's contention, when applied within the same proceeding, the doctrine of judicial estoppel does not require that a final determination have been rendered (see *Riconda v Liberty Ins.*

Underwriters, Inc., 187 AD3d 1081, 1082; *Matter of Hartsdale Fire Dist. v Eastland Constr., Inc.*, 65 AD3d 1345, 1346). In any event, before the separate motions and cross-motions were decided, the Supreme Court made a final determination adopting New Age's argument that the waiver of subrogation clauses were enforceable by granting New Age's separate motions for summary judgment dismissing the complaints of Utica First and Graphic Arts insofar as asserted against it (see *H & R Block Bank v Page*, 199 AD3d 780, 783; *Matter of Arriaga v Dukoff*, 123 AD3d 1023, 1025-1026, *affd* 28 NY3d 1).

Accordingly, the plaintiff failed to establish its *prima facie* entitlement to judgment as a matter of law dismissing the affirmative defenses of Brownstones and Country Fare asserting that the third amended complaint is barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age, and the court properly denied the plaintiff's separate cross-motions for summary judgment dismissing the affirmative defenses of Brownstones and Country Fare asserting that the third amended complaint is barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age without regard to the sufficiency of the opposition papers (see *Winegrad v New York Univ.*

Med. Ctr., 64 NY2d 851, 852). "[An] insurer can only recover if the insured could have recovered and its claim as subrogee is subject to whatever defenses the third party might have asserted against its insured" (*Westport Ins. Co. v Altermec Energy Conservation, LLC*, 82 AD3d 1207, 1209 [internal quotation marks omitted]; cf. *Morin v Morin*, 197 AD3d 1171, 1173).

Here, Brownstones and Country Fare established their *prima facie* entitlement to judgment as a matter of law dismissing the third amended complaint insofar as asserted against each of them on the ground that the third amended complaint is barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age.

In opposition, the plaintiff failed to raise a triable issue of fact (see *H & R Block Bank v Page*, 199 AD3d at 783; *Flanders v E.W. Howell Co., LLC*, 193 AD3d at 824), and was barred by the doctrine of judicial estoppel from contesting the enforceability of the waiver of subrogation

clauses contained in the relevant leases in support of its separate cross-motions for summary judgment dismissing the affirmative defenses of Brownstones and Country Fare asserting that the third amended complaint is barred insofar as asserted against each of them by the waiver of subrogation clauses contained in their respective leases with New Age.

Accordingly, the Supreme Court properly granted those branches of the separate motions of Brownstones and Country Fare which were for summary judgment dismissing the third amended complaint insofar as asserted against each of them.

In light of our determination, we need not reach the plaintiff's remaining contentions. LASALLE, P.J., FORD, VOUTSINAS and LANDICINO, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court