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

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| 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 |

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| | 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. Altertec Energy Conservation, LLC, 82 AD3d 1207, 1209
- Morin v. Morin, 197 AD3d 1171, 1173