

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - January 30, 2024

ANGELA G. IANNACCI, J.P.  
JOSEPH J. MALTESE  
HELEN VOUTSINAS  
CARL J. LANDICINO, JJ.

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2021-02299

DECISION & ORDER

Robert F. Parisi, respondent, v Kingstone Insurance  
Company, et al., appellants.

(Index No. 606058/18)

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McCauley Law Firm, PLLC, White Plains, NY (Todd M. McCauley of counsel), for  
appellants.

Feldman, Kramer & Monaco, P.C., Hauppauge, NY (Leonard B. Chipkin of counsel),  
for respondent.

In an action to recover damages for breach of an insurance contract and bad faith, the  
defendants appeal from an order of the Supreme Court, Suffolk County (Vincent J. Martorana, J.),  
dated December 29, 2020. The order granted that branch of the plaintiff's motion which was for  
summary judgment on the issue of liability and denied the defendants' cross-motion for summary  
judgment dismissing the complaint.

ORDERED that the order is modified, on the law, (1) by deleting the provision  
thereof granting that branch of the plaintiff's motion which was for summary judgment on the issue  
of liability on the cause of action alleging bad faith, and substituting therefor a provision denying that  
branch of the motion, and (2) by deleting the provision thereof denying that branch of the  
defendants' cross-motion which was for summary judgment dismissing the cause of action alleging  
bad faith, and substituting therefor a provision granting that branch of the cross-motion; as so  
modified, the order is affirmed, without costs or disbursements.

The plaintiff is the owner of a house in Blue Point (hereinafter the subject property).  
In 2017, a leak from a refrigerator water line saturated a layer of fill earth inside the walls of the  
subject property, which in turn caused the foundation wall to collapse. The plaintiff submitted a

May 29, 2024

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claim to his insurer, Kingstone Insurance Company (hereinafter Kingstone). Kingstone denied coverage for the foundation damage on the ground that the insurance policy excluded damage caused by earth movement and/or water damage. The plaintiff commenced this action against Kingstone and its parent company, the defendant Kingstone Companies, Inc., to recover damages for breach of an insurance contract and bad faith in denying insurance coverage. The plaintiff moved for summary judgment on the complaint or, alternatively, for summary judgment on the issue of liability, and the defendants cross-moved for summary judgment dismissing the complaint. In an order dated December 29, 2020, the Supreme Court granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability and denied the defendants' cross-motion. The defendants appeal.

“In determining a dispute over insurance coverage, we first look to the language of the policy” (*Consolidated Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208, 221; *see Gem-Quality Corp. v Colony Ins. Co.*, 209 AD3d 986, 990). “As with any contract, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court” (*White v Continental Cas. Co.*, 9 NY3d 264, 267 [citation omitted]; *see Baron v New York Mut. Underwriters*, 181 AD3d 638, 640). Generally, in a dispute over insurance coverage, the insured bears the initial burden of establishing that the loss claimed falls within the scope of the policy (*see McIntosh v Ronit Realty, LLC*, 181 AD3d 581, 582; *Bread & Butter, LLC v Certain Underwriters at Lloyd's, London*, 78 AD3d 1099, 1101). Once coverage is established, the insurer has the burden of proving the applicability of an exclusion (*see Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 311; *Castillo v Prince Plaza, LLC*, 164 AD3d 1418, 1419-1420). “Policy exclusions are to be strictly and narrowly construed and are not to be extended by interpretation or implication” (*Grenadier Realty Corp. v RLI Ins. Co.*, 218 AD3d 751, 753, quoting *East Ramapo Cent. Sch. Dist. v New York Schs. Ins. Reciprocal*, 150 AD3d 683, 686).

Here, the plaintiff demonstrated, *prima facie*, that the leak from the refrigerator water line was a covered loss. The subject insurance policy provides coverage for, among other things, a “loss caused by the accidental leakage, overflow, or discharge of liquids or steam from a plumbing, heating or air-conditioning system or domestic appliance.” In opposition, the defendants failed to raise a triable issue of fact as to whether the foundation damage was excluded from coverage under either the earth movement or water damage exclusions of the policy (*see Hudson v Allstate Ins. Co.*, 25 AD3d 654, 656; *Novick v United Servs. Auto. Assn.*, 225 AD2d 676, 677). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability on the cause of action alleging breach of an insurance contract and properly denied that branch of the defendants' cross-motion which was for summary judgment dismissing that cause of action.

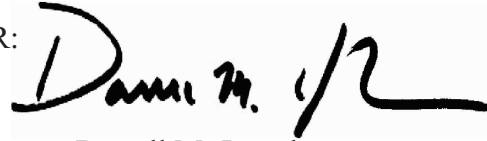
However, the Supreme Court should have granted that branch of the defendants' cross-motion which was for summary judgment dismissing the cause of action alleging bad faith and denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability on that cause of action. “[T]he cause of action alleging bad faith is duplicative of the cause of action alleging breach of contract, and ‘there is no separate tort for bad faith refusal to comply with an insurance contract’” (*Multani v Castlepoint Ins. Co.*, 221 AD3d 722, 725, quoting *Schlusselberg v*

*New York Cent. Mut. Fire Ins. Co.*, 206 AD3d 682, 683 [alterations omitted]).

The parties' remaining contentions need not be addressed in light of our determination.

IANNACCI, J.P., MALTESE, VOUTSINAS and LANDICINO, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", written over a light gray rectangular background.

Darrell M. Joseph  
Clerk of the Court