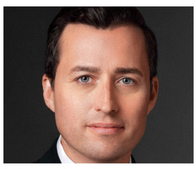

Eric Dinnocenzo. Courtesy Photo

COMMENTARY

New York Court of Appeals Tightens Pleading Standards Against Insurance Policyholder

In a recent split decision by the New York Court of Appeals in an insurance litigation case, the majority declined to extend a statute of limitation because, in its view, the insured's complaint did not contain enough specific information about why the repairs were not completed within two years.

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By Eric Dinnocenzo

If pleading requirements are like a vise grip, the New York Court of Appeals has tightened it on plaintiffs—edging closer to the more demanding federal standard by dismissing a breach of contract action brought by an insurance policyholder for filing an insufficiently detailed complaint.

In *Farage v. Associated Insurance Manager*, decided on Nov. 26, 2024, the court had to decide whether the plaintiff could be relieved from the shortened two-year limitations period contained in her New York fire insurance policy, based on an exception carved out a decade earlier in a 2014 Court of Appeals decision, *Executive Plaza LLC v. Peerless Insurance* for when "the property cannot reasonably be replaced within two years."

In the face of a three-justice dissent that invoked New York's liberal notice pleading standards, the *Farage* majority declined to extend *Peerless* because, in its view, the insured's complaint did not contain enough specific information about why the repairs were not completed within two years.

At the least, *Farage* signals to plaintiffs in all cases that perhaps New York's liberal pleading standards are not so liberal, after all, and that the less detailed information set forth in a complaint, the greater the risk of a dismissal. A consequence of *Farage*, too, is an imbalance between plaintiffs and defendants in the context of pleading statute of limitations issues. While plaintiffs must now provide highly specific reasons for why the limitations period should be relaxed, other Court of Appeals precedent allows defendants to generically assert a statute of limitations defense.

The Insured Could Not Repair Her Building Within Two Years

On Aug. 4, 2014, plaintiff Regina Farage's apartment building in Staten Island was severely damaged in a four-alarm fire. It was not until six years later, in 2020, that the repairs were finally completed. When Farage filed suit against Tower Insurance Company of New York at that time for payment, it responded with a CPLR § 3211(a)(1) motion to dismiss based on documentary evidence—the insurance policy containing the shorter two-year limitations period.

In opposition, Farage alleged that the combination of extensive fire damage and Tower's bad faith claims handling were the culprits for the delay.

Insureds who suffer a property loss are often faced with a double-edged sword. Under a standard New York fire insurance policy, they are subject to a brief two-year limitations period, yet insurers do not have to pay for replacement cost until after repairs or replacement are fully completed. The result is that insureds face off against the clock to coordinate with contractors, governmental authorities, and the insurance company to finish repairs within two years or else lose their legal rights, unless, that is, they file a preemptive lawsuit before there is a formal claim denial.

Peerless was intended to give insureds some breathing room, relaxing the abbreviated two-year limitations period under circumstances where "the property cannot reasonably be replaced within two years.

The Four-Justice Majority Opinion

A four-justice majority opinion authored by Justice Madeline Singas, and joined by Justices Michael Garcia, Anthony Cannataro and Shirley Troutman, held that the two-year limitations period was enforceable, had been breached, and dismissed the case under CPLR § 3211(a)(1).

Declining to extend *Peerless* to Farage's claim, the majority took the position that she did not allege in sufficient detail the reasons why the building could not be repaired within the two-year period. Although Farage asserted in the complaint that "[g]iven the massive structural damage wrought by the fire, the restoration of [the] property would have been [a] multi-year process under even the best of circumstances," the majority labeled this a conclusion, instead demanding more specific information like when work was started and the precise reasons it could not be completed within two years.

Similarly, the majority was not swayed by Farage's claim that Tower engaged in bad faith that caused the clock to run on her—including putting off an inspection that it insisted occur before work commenced, transferring the claim to a series of different adjusters resulting in "months of delay," and failing to pay vendors resulting in liens on the property that thwarted her ability to finance repairs. Even though Farage stated in the complaint that the bad faith made it "not possible for [plaintiff] to complete the restoration of the property until July 2020," the majority wanted an even more specific description of insurer misconduct that caused two years to pass without completed repairs.

Of note, too, the majority faulted Farage for not notifying Tower before the two-year period elapsed that the repairs were not complete, indicating that if she had done so, it might have changed the outcome.

The Three-Justice Dissent

Citing to black-letter law that a complaint should be construed "liberally," only needs to put the defendant "on notice" of the legal claims asserted, and that the plaintiff should be given "the benefit of every favorable inference" in the context of a motion to dismiss, the three-person dissent authored by Justice Jenny Rivera critiqued the majority for enforcing stricter pleading standards on the insured-plaintiff than are set forth in New York law.

According to the dissent, the majority turned accepted pleading standards on their head for each allegation the insured made why the building was not repaired within two years, construing them narrowly instead of broadly, and making inferences in favor of the defendant insurance company which filed the motion and against the insured plaintiff who opposed it.

For example, taken independently, the allegation that there was a "catastrophic, four-alarm fire" with the result that restoring the property would be a "multi-year process under even the best of circumstances" should have been enough, in the dissent's view, to survive dismissal under *Peerless*. The bad faith allegations were also sufficiently made, in the dissent's view. It was enough for Farage to state that "it was not possible for [her] to complete the restoration of the property until July 2020" with reference to a delayed insurance inspection, the claim being transferred to a series of different adjusters, and Tower failing to pay vendors resulting in property liens that interfered with financing repairs.

In the view of the dissent, the majority opinion "falls flat at every step" because it analyzed the allegations in the complaint individually and in a narrow manner, rather than considering them "liberally and holistically," as it had a duty to do under accepted pleading standards.

Lastly, the dissent took specific issue with the majority's indication that Farage should have notified Tower within the two-year period that repairs or replacement were incomplete, observing that no such notice requirement exists in the law or the insurance policy.

CPLR § 3211(a)(1) and Documentary Evidence

The dismissal in *Farage* was specifically granted under CPLR § 3211(a)(1) based on documentary evidence—the insurance policy with its shorter limitations period—and the dissent took the position that the majority inverted the standard for adjudicating CPLR § 3211(a)(1) motions.

Noting that a CPLR § 3211(a)(1) motion may only be granted where the documentary evidence "utterly refutes plaintiff's factual allegations," the dissent found that invoking the insurance policy and its shortened two-year limitations period did not "utterly refute" the factual allegations made by Farage that her property could not be repairs within two years.

An Imbalance Between Plaintiffs and Defendants on Limitations Issues

Farage arguably marks a departure from well-established New York pleading standards. It also places plaintiffs on an unequal footing to defendants, at least concerning motions to dismiss based on limitations periods.

Years earlier, in a 1979 decision, *Immediate v. St. John's Queens Hospital*, the Court of Appeals held that a hospital in a medical malpractice case asserting a statute of limitations defense "was not required to identify the statutory section relied on or to specify the applicable period of limitations."

It is difficult to reconcile *Immediate*, which allows a defendant to broadly and generally assert a statute of limitations defense, with *Farage* which requires a plaintiff to provide highly detailed information for why an established exception to a limitations period should apply. For context, Farage filed suit exactly six years after the date of loss, which would be timely for a typical breach of contract case.

In any case, the lesson from *Farage* is that all plaintiffs in civil litigation may want to err on the side of caution and include detailed supporting factual information in their complaints.

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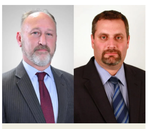

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