

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

AMARO FOOD ENTERPRISES INC., :

Plaintiff, :

vs. :

LIBERTY MUTUAL INSURANCE, :

Defendant. :

---

Civil Action No. 1:24-cv-07784-JPO

---

**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANT LIBERTY MUTUAL INSURANCE’S  
MOTION TO DISMISS THE COMPLAINT**

---

JEFFREY A. BRONSTER, ESQ.  
17 Wendell Place  
Fairview, NJ 07022  
(201) 945-2566  
Attorney ID: JB2620  
[jbronster@bronsterlaw.com](mailto:jbronster@bronsterlaw.com)  
*(Counsel for Plaintiff)*

**PRELIMINARY STATEMENT**

Defendant Liberty Mutual Insurance (“LMI”) has moved to dismiss the Complaint, asserting a lack of compliance on the part of the plaintiff with the policy provision that requires that suit be commenced within 12 months after the date of loss. However, Plaintiff did comply with that provision. Although not mentioned in LMI’s brief, Plaintiff filed a timely action on this claim in the Superior Court of New Jersey. The case was dismissed on LMI’s motion that the under the policy the suit had to be filed in New York, a position that the plaintiff contested. The filing of that lawsuit, despite its ultimate dismissal, satisfied the relevant policy condition.

**STATEMENT OF FACTS**

The loss in this case occurred on or about July 13, 2022. On May 30, 2023, Plaintiff filed a Complaint in the Hudson County Law Division of the Superior Court of New Jersey. After filing an Answer, LMI filed a motion to dismiss the Complaint, asserting that under the policy any lawsuit had to be filed in the state or federal courts of New York. On November 3, 2023, the Honorable Kalimah Ahmad granted LMI’s motion to dismiss. The plaintiff subsequently filed a motion for reconsideration, and on December 22, 2023, Judge Kalimah denied reconsideration, bringing the New Jersey case to a close. The basis for the dismissal was the provision in the policy that purported to vest exclusive jurisdiction over any policy dispute in the state of federal courts of New York.

As a result of the dismissal the case was re-filed in the Supreme Court of the State of New York, and was subsequently removed to this Court by LMI. The lawsuit was admittedly filed beyond one year from the loss date. But the filing of the *New Jersey* lawsuit satisfied the policy requirement on its face, and accordingly LMI’s motion to dismiss the Complaint in this case should be denied.

### LEGAL ARGUMENT

The statute of limitations for filing a breach of contract action in New York is six years. However, like most property and casualty insurance policies, the LMI policy contains an admittedly enforceable provision that to pursue a claim, suit must be commenced “within (12) months next after the calendar year of the inception of the physical loss or damage.” The plaintiff complied with that provision by filing the New Jersey lawsuit.

The defendant’s motion is based on the premise that *this particular lawsuit* needed to be filed within twelve months of the loss. Presumably it considers the New Jersey lawsuit to have been a nullity, as LMI does not even inform the Court in its brief that the New Jersey suit had even been filed. But under LMI’s formulation, the one-year period had expired before the New Jersey case was even dismissed; hence, the fact that the Superior Court agreed with LMI on the jurisdiction issue would have the effect of forever barring any claim for the plaintiff’s loss.

The plaintiff will not address here the case law cited by LMI. Those citations are all in support of the proposition that a suit-limitation clause in a policy is enforceable, and the plaintiff is not disputing that argument. The issue on this motion is the *interpretation* of the provision. Whether or not the plaintiff could pursue its claim in New Jersey was a debatable issue, as reflected in the briefs submitted herewith as exhibits. But LMI’s interpretation that the timely filing of the New Jersey suit did not *satisfy* the limitation provision is not a matter of case law; it is a matter of the proper interpretation of the policy and the reasonable expectations of the insured.

The plaintiff submits that the timely filing of the New Jersey lawsuit, despite its ultimate dismissal, satisfied the limitation provision based on the clear and unambiguous meaning of that provision. However, if and to the extent that the Court finds the issue to be debatable, then the

provision is ambiguous, and must be interpreted in the light of the case law that governs such ambiguity in insurance policies, which by their very nature are contracts of adhesion. New York case law on this subject is clear:<sup>1</sup>

Insurance contracts must be interpreted according to common speech and consistent with the reasonable expectation of the average insured . . . .

Before an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation . . . .

Ambiguities in an insurance policy are to be construed against the insurer . . . .

*Dean v. Tower Ins. Co. of N.Y.*, 19 N.Y.3d 704, 708 (2012) [citations and internal quotation marks omitted].

The Second Circuit has acknowledged that under New York law it is “fundamental” that “insurance policies are to be construed, and ambiguity assessed, in light of the reasonable expectations of the insured.” *Fabozzi v. Lexington Ins. Co.*, 639 Fed. Appx. 758, 763 (2d Cir. 2016). *See also, Ezrasons, Inc. v. Travelers Indem. Co.*, 89 F.4th 388, 396 (2d Cir. 2023) [“When dealing with insurance policies, it is a ‘fundamental’ principle of New York law that ambiguities should be interpreted against the insurer and in favor of the insured”].<sup>2</sup>

---

<sup>1</sup> The insurance policy provides that admiralty law shall apply to the contract. However, as this is an issue not covered by admiralty law, New York law controls on this motion.

<sup>2</sup> In *Ezrasons* the court noted that in the case of a *latent* ambiguity, the interpretation of the policy could become a mixed question of law and fact. Here, however, Plaintiff is relying upon a claim of patent ambiguity, and the determination as to the reasonable expectations of the insured is one to be made by the Court as a matter of law.

A reasonable insured in the position of Amaro Foods would certainly believe that the filing of a lawsuit asserting its claim within the one-year period would satisfy the policy requirement. It would have no basis to believe that an ultimate determination by the court that the case should be re-filed in a different jurisdiction would somehow retroactively nullify the insured's timely compliance with that provision.

**CONCLUSION**

Based upon all of the foregoing, the plaintiff respectfully submits that LMI's motion to dismiss the Complaint should be denied in all respects.

Respectfully submitted,

*/s/ Jeffrey A. Bronster*

JEFFREY A. BRONSTER

Dated: January 21, 2025