

Allstate Indem. Co. v Virfra Holdings, LLC
2015 NY Slip Op 00623
Decided on January 26, 2015
Appellate Division, First Department
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Decided on January 26, 2015

Tom, J.P., Acosta, Saxe, Moskowitz, Feinman, JJ.

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[*1] Allstate Indemnity Company as subrogee of Corey Wecler, Cara Ottilio-Cooper, and Sherrie Fried, Plaintiff-Appellant,

v

Virfra Holdings, LLC, Defendant-Respondent, Evans Relocation, doing business as Evans Real Estate, Defendant.

Feldman & Feldman, LLP, Smithtown (Leonard B. Feldman of counsel), for appellant.

Cinotti LLP, New York (Scott Stone of counsel), for respondent.

Order, Supreme Court, New York County (Ellen M. Coin, J.),

entered July 11, 2013, which, insofar as appealed from, granted the motion of

defendant Virfra Holdings to dismiss the complaint as against it, unanimously affirmed, with costs. Appeal from order, same court and Justice, entered March 13, 2014, which, inter alia, upon reargument, adhered to the original determination, unanimously dismissed, without costs, as academic.

The motion court correctly determined that the waiver of subrogation clause contained in the insurance policies and bylaws of the condominium association precluded this action. The nature of the loss that occurred herein was of the exact nature contemplated by the waiver of subrogation provision (*see e.g. Kaf-Kaf, Inc. v Rodless Decorations* , 90 NY2d 654, 660 [1997]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 26, 2015

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