

2016 WL 4702106

Only the Westlaw citation is currently available.  
United States District Court,  
E.D. New York.

Mikael Mikaelian, et al., Plaintiffs,  
v.  
Liberty Mutual Insurance, Defendant.

No 15-CV-6182 (JFB)(AYS)

|  
Signed September 8, 2016

\*\*\* Start Section

... not allege that Mikael has any connection to the Premises apart from his purchase of the Policy. Plaintiffs do not dispute this, but rather argue that Mikael need not have a legal or equitable interest in the property to have an insurable interest. (Pls.' Opp'n at 5-6.)

[New York Insurance Law Section 3401](#) provides that:

No contract or policy of insurance on property made or issued in this state, or made or issued upon any property in this state, shall be enforceable except for the benefit of some person having an insurable interest in the property insured. In this article, "insurable interest" shall include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

[N.Y. Ins. Law § 3401](#); see also [Azzato v. Allstate Ins. Co.](#), 951 N.Y.S.2d 726, 733 (App. Div. 2012) ("It has long been the rule that, in order to prevent fraud and crime and to prohibit wagering contracts on property in which the insured possesses no interest, the lack of an insurable interest in the property insured renders the property insurance void and unenforceable. Thus, the law of this State requires that the named insured have an insurable interest in the subject matter of the policy of insurance." (internal quotation marks, alteration and citation omitted)).

New York courts have noted that "a legal or equitable interest in the property insured is not necessary to support an insurable interest. Rather, a person has an insurable

interest in a property whenever he or she would profit by or gain some advantage from the property's continued existence or suffer some loss or disadvantage by its destruction." [Azzato](#), 951 N.Y.S.2d at 733 (internal quotation marks and citations omitted); see also [Scarola v. Ins. Co. of N. Am.](#), 292 N.E.2d 776, 777 (N.Y. 1972) ("In general a person has an insurable interest in the subject matter insured where he has such a relation or connection with, or concern in, such subject matter that he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against."). However, "the interest must be of such a character that the destruction of the property will have a direct, and not a mere remote or consequential, effect upon it. Mere possession or license to use the property is insufficient to support an insurable interest where the insured would experience no direct economic loss by its destruction." [Azzato](#), 951 N.Y.S.2d at 733 (internal quotation marks and citations omitted).

Thus, because plaintiffs have not alleged that Mikael has any connection to the property aside from procuring the insurance and paying the insurance premiums, plaintiffs have not adequately alleged that Mikael has an insurable interest in the property. See, e.g., [Silberman v. Royal Ins. Co.](#), 584 N.Y.S.2d 625, 625 (App. Div. 1992) (holding that "[t]he plaintiff's payment of the purchase price and insurance premiums on the vehicle [owned by his wife] did not give rise to any equitable or other interest within the meaning of [Insurance Law § 3401](#) that could be insured"); [Azzato](#), 951 N.Y.S.2d at 734 (finding wife lacked insurable interest in property although plaintiffs alleged that she contributed to the purchase of her husband's share of the property, and helped maintain and furnish the property where plaintiffs did not allege that she earned any income from or resided in the property, or had any right to do so).

\*6 Further, although plaintiffs have argued that defendant should be estopped from asserting a lack of insurable interest because it accepted insurance payments from Mikael Mikaelian, because the insurable interest requirement is statutory, it is not subject to estoppel. See, e.g., [F.A.S.A. Const. Corp. v. Vill. of Monroe](#), 789 N.Y.S.2d 175, 177 (App. Div. 2005) ("[E]quitable estoppel cannot be invoked to relieve a party...