

2016 WL 1035286  
Supreme Court, Appellate Division,  
Second Department, New York.

[Richard FREUNDLICH](#), respondent,

v.

PACIFIC INDEMNITY COMPANY,  
defendant, Foa & Son Corporation, appellant.

March 16, 2016.

### Synopsis

**Background:** Property owner brought action against insurance broker, inter alia, to recover damages for negligent procurement of insurance coverage. Defendant moved to dismiss for failure to state a claim. The Supreme Court, Suffolk County, [Santorelli, J.](#), denied motion. Defendant appealed.

**[Holding:]** The Supreme Court, Appellate Division, held that owner sufficiently alleged existence of a special relationship between himself and insurance broker so as to give rise to a duty to advise property owner to obtain workers' compensation coverage.

Affirmed.

West Headnotes (2)

**[1] Insurance**



Generally, insurance brokers have a common-law duty to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so; however, they have no continuing duty to advise, guide or direct a client to obtain additional coverage.

[Cases that cite this headnote](#)

**[2] Insurance**



Property owner sufficiently alleged the existence of a special relationship between himself and insurance broker so as to give rise to a duty to advise property owner to obtain workers' compensation coverage for persons hired to work on his home, as required to state negligence claim against broker, where owner alleged that broker had been informed that owner had hired workers for his home.

[Cases that cite this headnote](#)

### Attorneys and Law Firms

Goldberg Segalla LLP, New York, N.Y. ([Stewart G. Milch](#), [Peter J. Biging](#), [Jason L. Ederer](#), and [Brendan Fitzpatrick](#) of counsel), for appellant.

Hoguet Newman Regal & Kenney, LLP, New York, N.Y. ([Joshua Blosveren](#) of counsel), for respondent.

[MARK C. DILLON](#), J.P., [THOMAS A. DICKERSON](#), [LEONARD B. AUSTIN](#), and [COLLEEN D. DUFFY](#), JJ.

### Opinion

\*1 In an action, inter alia, to recover damages for negligent procurement of insurance coverage, the defendant Foa & Son Corporation appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County ([Santorelli, J.](#)), dated August 7, 2014, as denied that branch of its motion which was pursuant to [CPLR 3211\(a\)\(7\)](#) to dismiss the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff commenced this action against, among others, Foa & Son Corporation (hereinafter Foa), a company that the plaintiff allegedly used for personal insurance brokerage and risk management services. Insofar as asserted against Foa, the complaint alleged that Foa negligently failed to advise the plaintiff to obtain workers' compensation insurance, and negligently failed to procure such insurance, after being informed that the plaintiff hired workers at his home. Foa moved, inter alia, pursuant to [CPLR 3211\(a\)\(7\)](#) to dismiss the complaint insofar as asserted against it. In the order appealed from, the Supreme Court, among other things, denied that

branch of Foa's motion. Foa appeals from that portion of the order.

“In considering a motion to dismiss pursuant to CPLR 3211(a)(7), a court should accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Igneri v. Igneri*, 125 A.D.3d 813, 814, 4 N.Y.S.3d 272; see *Trotta v. Ollivier*, 91 A.D.3d 8, 11–12, 933 N.Y.S.2d 66; *Spector v. Wendy*, 63 A.D.3d 820, 821, 881 N.Y.S.2d 465). In opposition to a motion to dismiss pursuant to CPLR 3211(a)(7), the plaintiff may submit an affidavit to remedy any defects in the complaint (see *Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 635–636, 389 N.Y.S.2d 314, 357 N.E.2d 970).

[1] Generally, “insurance brokers have a common-law duty to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so; however, they have no continuing duty to advise, guide or direct a client to obtain additional coverage” (*Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 734, 985 N.Y.S.2d 448, 8 N.E.3d 823 [internal quotation marks omitted]). However, “situations may arise in which insurance agents, through their conduct or by express or implied contract with customers and

clients, may assume or acquire duties in addition to those fixed at common law” (*id.* at 735, 985 N.Y.S.2d 448, 8 N.E.3d 823 [internal quotation marks omitted]).

[2] Here, accepting the allegations in the complaint, as amplified by the plaintiff's affidavit, as true, and according the plaintiff the benefit of every possible favorable inference, the plaintiff sufficiently alleged the existence of a special relationship between Foa and the plaintiff so as to give rise to a duty to advise (see *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d at 735–736, 985 N.Y.S.2d 448, 8 N.E.3d 823; *Whitebox Concentrated Convertible Arbitrage Partners, L.P. v. Superior Well Servs., Inc.*, 20 N.Y.3d 59, 63, 956 N.Y.S.2d 439, 980 N.E.2d 487; *South Bay Cardiovascular Assoc., P.C. v. SCS Agency, Inc.*, 105 A.D.3d 939, 942, 963 N.Y.S.2d 688; *Lynch v. McQueen*, 309 A.D.2d 790, 791–792, 765 N.Y.S.2d 645). Accordingly, the Supreme Court properly denied that branch of Foa's motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against it.

#### All Citations

--- N.Y.S.3d ----, 2016 WL 1035286, 2016 N.Y. Slip Op. 01802