

As the court has stated previously, this is a subrogation action in which plaintiff-subrogee seeks to recover from defendants amounts it paid to its insured subrogor as a result of damages arising out of a fire which occurred at 400 Lafayette Street on or about December 31, 2000.

Plaintiff's investigator concluded in an Origin and Cause report that "the cause of the fire was most probably heat from the heating unit, itself, burning down and igniting the combustible wood flooring and structural members." Plaintiff presents no evidence that raises and issue of fact as to defendants' culpability for the fire. The mere fact that the defendants had done renovation work in the area around the boiler is insufficient to establish that any negligence on their part caused or contributed to the fire. As stated by the Second Department in a case controlling here

A fire occurred in the defendant's insurance office in Mount Vernon. The plaintiff insurance companies are subrogees of their insureds whose property was damaged. They brought this action on the theory that the fire was caused by the defendant's negligence. The defendant established its prima facie entitlement to summary judgment by submitting evidence that the cause of the fire was undetermined and that the defendant committed no act from which a jury could rationally infer that it negligently caused the fire. In opposition, the plaintiffs' expert's opinion was based on speculation and was therefore insufficient to raise a triable issue of fact as to the defendant's liability.

Tower Ins. Co. v Allstate Ins. Co., 31 AD3d 630, 631 (2d Dept 2006). In this case, plaintiffs have failed to submit any expert

testimony from which a factfinder could hold that the fire was caused by the defendants. The court shall therefore dismiss the complaint.

Accordingly, it is

ORDERED and ADJUDGED that the cross-motions for summary judgment dismissing this action are GRANTED; and it is further

ORDERED and ADJUDGED that the Clerk is directed to enter judgment DISMISSING the complaint, all third-party complaints, all cross-claims and all counterclaims in their entirety against all parties.

This is the decision and order of the court.

Dated: January 2, 2008

ENTER:

J.S.C.

DEBRA A. JAMES
J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the Court and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (141B).