

# Supreme Court of the State of New York

## Appellate Division: Third Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

<b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
EDWARD DAIRE and ALLISON DAIRE,  <div style="text-align: center;">Plaintiffs/Appellants,</div> <div style="text-align: center;">- against -</div> HBE GROUP, INC., and STERLING INSURANCE COMPANY,  <div style="text-align: center;">Defendants/Respondents.</div>		Date Notice of Appeal Filed
<b>Case Type</b>		<b>Filing Type</b>
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
<b>Nature of Suit:</b> Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation
<input type="checkbox"/> Contracts		<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Prisoner Discipline & Parole		<input type="checkbox"/> Torts

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Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court		County: Chenango	
Dated: 10/21/2020		Entered: 10/23/2020	
Judge (name in full): Joseph A. McBride		Index No.: 2019-5393	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.			
Appeal from the Decision and Order of the Hon. Joseph McBride dated August 21, 2020, which erroneously granted the defendant insurer's motion for summary judgment dismissing plaintiffs' complaint due to defendant insurer's failure to pay plaintiffs' insurance loss claim on the grounds that its landlord policy excluded vandalism and other acts of destruction by a tenant under an entrustment exclusion, as someone to whom the property was entrusted.			

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Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

(1) Whether a factual dispute remained and the court erroneously ruled the "Dishonest or Criminal Acts" exemption in the Policy was, as a matter of law, an express entrustment exclusion under the facts in the case at bar, and improperly construed the same in favor of the insurer.

(2) Whether the language in the subject exclusion is ambiguous as to whether or not "anyone to whom you entrust property for any purpose" includes the tenant in a rental property and can be expanded to include what it refers to as any and all "occupants" who at some point may have stayed at the rental property.

(3) Whether a factual dispute remained and the court erroneously ruled that the exclusion provision unambiguously includes vandalism as a criminal act where the insurance policy does not define the term vandalism, and defendant failed to establish that the acts of destruction and work done by the tenants without plaintiff's permission constituted renovations rather than mere vandalism, and the court erroneously failed to construe the ambiguity in the exclusion terms in favor of the insured plaintiffs.

### Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Edward Daire	Plaintiff	Appellant
2	Allison Daire	Plaintiff	Appellant
3	HBE Group, Inc.	Defendant	Respondent
4	Sterling Insurance Company	Defendant	Respondent
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## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Ronald R. Benjamin, Esq., Law Office of Ronald R. Benjamin

Address: 126 Riverside Drive, P.O. Box 607

City: Binghamton State: NY Zip: 13902-0607 Telephone No: (607) 772-1442

E-mail Address: ronbenjaminlaw@stny.rr.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1,2

Attorney/Firm Name: Peter W. Knysch, Esq., Knysch & Whritenour, LLC

Address: One Park Place, 300 South State Street

City: Syracuse State: NY Zip: 13202 Telephone No: (315) 472-1175

E-mail Address: PK@pknychlaw.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 3,4

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

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