

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26904
Y/hu

_____AD3d_____

Argued - January 5, 2010

MARK C. DILLON, J.P.
JOSEPH COVELLO
HOWARD MILLER
CHERYL E. CHAMBERS, JJ.

2008-05214

DECISION & ORDER

Cynthia Hoogland, etc., et al., plaintiffs-respondents,
v Transport Expressway, Inc., et al., defendants,
Walmart Stores East, Inc., et al., defendants-
respondents, Fiducie Location Pinard, appellant
(and a third-party action).
(Action No. 1)

Denise Malkin, plaintiffs-respondents, v Transport
Expressway, Inc., et al., defendants, Walmart Stores
East, Inc., et al., defendants-respondents, Fiducie
Location Pinard, appellant.
(Action No. 2)

(Index Nos. 8741/04, 0050/05)

Lynch & Lynch, Mineola, N.Y. (Brian M. Hussey and Anthony U. DeVito of
counsel), for appellant.

Porzio, Bromberg & Newman, P.C., New York, N.Y. (Allan Young of counsel), for
defendants-respondents Walmart Stores East, Inc., and Daniel Hill.

Geraghty, Foti & Suarez, LLP, c/o Mahoney & Keane, New York, N.Y. (John R.
Geraghty and Robert A. Suarez of counsel), for defendants-respondents Port
Authority of New York and New Jersey, Port Newark Container Terminal, LLC,
P&O Nedlloyd Limited, and P&O Ports North America, Inc.

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HOOGLAND v TRANSPORT EXPRESSWAY, INC.
MALKIN v TRANSPORT EXPRESSWAY, INC.

Garcia & Stallone, Deer Park, N.Y. (Karl Zamurs of counsel), for defendants-respondents Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., and New Amera Transit, Inc.

In related actions, inter alia, to recover damages for wrongful death, etc., the defendant Fiducie Location Pinard appeals, as limited by its brief, from so much of an order of the Supreme Court, Orange County (Alessandro, J.), dated April 18, 2008, as granted those branches of the cross motion of the defendants Walmart Stores East, Inc., and Daniel Hill, the separate cross motion of the defendants Port Authority of New York and New Jersey, Port Newark Container Terminal, LLC, P&O Nedlloyd Limited, and P&O Ports North America, Inc., and the separate cross motion of the defendants Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., and New Amera Transit, Inc., which were for summary judgment dismissing certain cross claims insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the appellant's contention, its cross claims for common-law indemnification were, in actuality, for contribution, and are therefore barred by General Obligations Law § 15-108(c) (*see Glaser v M. Fortunoff of Westbury*, 71 NY2d 643, 646-647).

DILLON, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

2008-05214

DECISION & ORDER ON MOTION

Cynthia Hoogland, etc., et al., plaintiffs-respondents,
v Transport Expressway, Inc., et al., defendants,
Walmart Stores East, Inc., et al., defendants-
respondents, Fiducie Location Pinard, appellant
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HOOGLAND v TRANSPORT EXPRESSWAY, INC.
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Cross motion by the respondents Walmart Stores East, Inc., and Daniel Hill to dismiss an appeal from an order of the Supreme Court, Orange County, dated April 18, 2008, inter alia, on the ground that it has been rendered academic. Separate cross motion by the respondents Port Authority of New York and New Jersey, Port Newark Container Terminal, LLC, P&O Nedlloyd Limited, and P&O Ports North America, Inc., to dismiss the appeal, inter alia, in effect, on the ground that the appellants are not aggrieved. Separate cross motion by the respondents Nippon Yusen Kabushiki Kaisha, NYK Line (North America), Inc., and New Amera Transit, Inc., to dismiss the appeal on the ground that the appellants lack standing by virtue of General Obligations Law § 15-108. By decision and order on motion dated March 12, 2009, the cross motions were held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the cross motions and the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that those branches of the cross motions which were to dismiss the appeal by the defendants Transport Expressway, 3145221 Canada, Inc., and Sebastian Tremblay, are denied as academic, as that appeal was previously withdrawn by order on application dated April 17, 2009; and it is further,

ORDERED that those branches of the cross motions which were to dismiss the appeal by the defendant Fiducie Location Pinard is denied (*see Hoogland v Transport Expwy, Inc.*, _____ AD3d _____ [decided herewith]).

DILLON, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court