

<b>AIG Prop. Cas. Co. v Lane</b>
2026 NY Slip Op 30954(U)
March 9, 2026
Supreme Court, New York County
Docket Number: Index No. 150840/2024
Judge: Phaedra F. Perry-Bond
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35**

*Justice*

-----X

INDEX NO. 150840/2024

AIG PROPERTY CASUALTY COMPANY, a/s/o/ WILLIAM LEWIS and CAROL LEWIS

MOTION DATE 04/07/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

CURTIS LANE, STACEY LANE, C-SQUARED CONTRACTING INC., ASSOCIATED MECHANICAL, INC., LTB MECHANICAL CORP., B & H RESTORATION, INC., TRI-POWER ENGINEERING, LLC,

**DECISION + ORDER ON MOTION**

Defendant.

-----X

C-SQUARED CONTRACTING INC.

Third Third-Party  
Index No. 595385/2025

Plaintiff,

-against-

B&H RESTORATION INC.

Defendant.

-----X

LTB MECHANICAL CORP.,

Plaintiff,

-against-

Second Third-Party  
Index No. 595177/2025

B&H RESTORATION INC. and TRI-POWER ENGINEERING, LLC,

Defendant.

-----X

C-SQUARED CONTRACTING INC.

Plaintiff,

-against-

Third Third-Party  
Index No. 595385/2025

B&H RESTORATION INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 57, 58, 59, 60, 61, 66, 67, 139, 140

were read on this motion to/for

DISMISS

Upon the foregoing documents, Defendant/Second-Third Party Defendant Tri-Power Engineering, LLC's ("Tri-Power") motion to dismiss Defendant/Second Third-Party Plaintiff LTB Mechanical Corp.'s ("LTB Mechanical") Second Third-party Complaint is denied.<sup>1</sup>

### **I. Background**

Plaintiff insured William and Carol Lewis, residents of Unit 7CD/8D ("Lewis Unit") at 101 Central Park West, New York, New York (the "Building"). Defendants Curtis Lane and Stacey Lane (collectively "Lane Defendants") live in Unit 10E (the "Lane Unit") of the Building. The Lane Defendants retained Defendant/Third-Party Plaintiff C-Squared Contracting Inc. ("C-Squared") to perform renovation work in the Lane Unit. Plaintiff alleges LTB Mechanical was retained to install exhaust systems, refrigerator lines duct, electric heaters, and other items associated with the HVAC system serving the Lane Unit. Allegedly, on February 5, 2023, as a result of the renovation work related to an HVAC system, in the Lane Unit, a pipe failed and caused water to flood the Lewis Unit. Plaintiff reimbursed William and Carol Lewis for their alleged property damage and now seeks to recover sums paid out in this subrogation action.

Tri-Power, which is now named a direct defendant, was originally impleaded as a second third-party defendant by LTB Mechanical. According to LTB Mechanical, Tri-Power provided engineering, inspection, and design plans for the HVAC work which allegedly caused Plaintiff's damages. Tri-Power now moves to dismiss arguing LTB Mechanical's claims are barred by the *Espinal* doctrine, LTB Mechanical cannot seek common law indemnification because LTB

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<sup>1</sup> Tri-Power moved to dismiss pursuant to CPLR 3211(a)(7) and (a)(3). It made no arguments in support of the motion pursuant CPLR 3211(a)(3) and therefore the Court disregards it.

Mechanical is being sued for its own negligence, and there is no contractual indemnification owed LTB Mechanical by Tri-Power.

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives claimant the benefit of all favorable inferences which may be drawn from the pleadings, and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]).

As a preliminary matter, the contracts, invoices, and affidavits submitted by Tri-Power are inappropriate as Tri-Power did not seek dismissal in its notice of motion pursuant to CPLR 3211(a)(1). In any event, those documents do not conclusively refute LTB Mechanical's allegations and are therefore insufficient. On a pre-answer motion to dismiss, it is premature to make a finding there exist no contracts through which Tri-Power may have agreed to indemnify LTB Mechanical. The arguments raised by Tri-Power are more suited for summary judgment after there has been some exchange of discovery.

Likewise, Tri-Power's arguments regarding the application of the *Espinal* doctrine, which is typically a fact-intensive analysis, is not ripe for determination on a motion to dismiss where there has been little if any discovery exchanged (*see, e.g. Harellick v De LA Cruz Lora*, 245 AD3d 595, 596 [1st Dept 2026] [issue of fact as to whether construction firm and electrical subcontract launched instrument of harm by improperly installing temporary pedestrian signal]; *Hyland v MFM Contracting Corp.*, 225 AD3d 424, 424 [1st Dept 2024] [issue of fact as to whether resident engineer on construction project launched instrument of harm based on choice of fabric used to enclose construction area]). Tri-Power may renew this argument on a more developed record on summary judgment.

Finally, it is premature to make any rulings on the common law indemnification claim as it remains an issue of fact as to whether LTB Mechanical will be held vicariously liable as a result of Tri-Power active negligence. Tri-Power factual arguments made in support of the motion are inappropriate given the procedural posture – namely a pre-answer motion to dismiss. Therefore, the common law indemnification claim is sustained. Therefore, the motion to dismiss is denied. The arguments in support of dismissal, which are factual in nature and require an exchange of discovery, may be renewed upon a future motion for summary judgment.

Accordingly, it is hereby,

ORDERED that the motion to dismiss is denied, and the arguments raised in support of the motion may be renewed on a future motion for summary judgment; and it is further

ORDERED that within twenty days of entry of this Decision and Order, counsel for Tri-Power shall serve an Answer to the Second Third-party Complaint; and it is further

ORDERED that if the parties wish to resolve this dispute through the Court’s sponsored ADR program, they shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for LTB Mechanical shall serve a copy of this Decision and Order, with notice of entry, upon all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/9/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE

APPLICATION:  DENIED  SUBMIT ORDER

CHECK IF APPROPRIATE:  FIDUCIARY APPOINTMENT