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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN Justice

PART 17

0124258/2002

CIOFFI, DENNIS
VS
AMERICAN AIRLINES

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SEQ 2

SUMMARY JUDGMENT

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 11/8/04

EMILY JANE GOODMAN J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 17

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DENNIS CIOFFI and SHERYL CIOFFI,

Plaintiffs, Index No. 124258/02

-against-

AMERICAN AIRLINES, INC. and V.R.H./TORCON, A JOINT VENTURE,

Defendant.

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AMERICAN AIRLINES, INC., and V.R.H./TORCON, A JOINT VENTURE,

Third-Party Plaintiff, Third-Party Index No. Index No. 591360/03

-against-

ARCHITCRAFT, INC.,

Third-Party Defendant.

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EMILY JANE GOODMAN, J.S.C.:

Third-Party Defendant Architcraft, Inc.'s ("Architcraft") motion for summary judgment dismissing the third-party complaint for contractual indemnification asserted against it by Defendant/Third-Party Plaintiff American Airlines, Inc. and VRH/Torcon, a Joint Venture ("AA/VRH"), is granted.

AA/VRH asserted a third-party claim for contractual indemnification against Architcraft, based on a contract between UAD group, as "Contractor" and Architcraft as "Subcontractor." Essentially, Defendant/Third-Party Plaintiff maintains that it was a

third-party beneficiary to that contract. Architcraft moves for summary judgment on the basis that the contract is unambiguous, and by its terms, does not cover AA/VRH. In opposition, AA/VRH claims that the motion should be denied because the motion was only based on an attorney's affirmation. Moreover, AA/VRH contends that the motion should be denied because Paragraph 12 and 13 of the contract, which provides that Architcraft shall (1) obtain liability insurance, naming the "Contractor" and "Owner" as additional insureds, and (2) indemnify and hold harmless the "Contractor" and "Owner," could be interpreted to cover AA/VRH. Given that the Whereas clause defines "Owner" as "The Port Authority of New York and New Jersey or its architect, construction manager or engineer," AA/VRH maintains that a reasonable person could interpret the term "construction manager" to cover VRH/Torcon, as the Managing General Contractor for the project. Accordingly, Defendant/Third-Party Plaintiff maintains that it should be able to introduce testimony at trial to show that the parties' intent was to include it as an additional insureds.

The Court determines that summary judgment should be granted in favor of Architcraft and the third-party complaint should be dismissed.[1]

The standards for summary judgment are well settled.

> "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[1]Defendant Third-Party Plaintiff does not dispute that Plaintiff has not suffered a grave injury as defined by Worker's Compensation Law § 11, and therefore, the only issue in this motion is whether it is entitled to contractual indemnification.

> evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action"

(Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986][internal citations omitted]).

Architcraft has made a prima facie showing of entitlement to summary judgment, as a matter of law. AA/VRH has not established any issue of fact, which would preclude the grant of summary judgment. The fact that the motion was made by affirmation, not affidavit, is not grounds to deny summary judgment because the issue is one of law, not fact. Further, AA/VRH's argument that the term "Owner" is ambiguous and could refer to it, is unpersuasive. There is no liability to indemnify another unless the obligation to indemnify is plainly spelled out in the contract (see Rosado v. Proctor & Schwartz, Inc., 106 AD2d 27, 30 [1st Dept 1984]). Absent ambiguity, contracts are interpreted according to their plain meaning, without resort to extrinsic evidence (see Chimart Assoc. v Paul, 66 NY2d 570 [1986]). The plain meaning of the contract supports the position of Architcraft, not AA/VRH. Paragraph 12 and 13 of the contract provide that Architcraft shall obtain liability insurance, naming the "Contractor" and "Owner" as additional insureds, and, that Architcraft shall indemnify and hold harmless the "Contractor" and "Owner." However, AA/VRH does not fall within the definition of the "Owner." The

Whereas clause of the contract provides that:

Whereas, Contractor has entered into a written contract with V.R.H. Torcon, A Joint Venture ("General Contractor"), who has entered into an agreement as General Contractor with The Port Authority of New York and New Jersey or its architect, construction manager or engineer ("Owner") for the construction of [the project]".

Based on these words, it is illogical to conclude that Defendant/Third-Party Plaintiff can be both the "General Contractor" and the "Owner" given that a party to a contract can not enter into an agreement with itself. Further, the use of the word "its" before the terms "architect, construction manager or engineer" refers to The Port Authority of New York and New Jersey ("Port Authority"). According to AA/VRH, Port Authority leases the premises where the accident occurred to American Airlines, Inc., who, in turn, retained V.R.H./Torcon, as a Managing General Contractor. Therefore, AA/VRH can not be considered Port Authority's "construction manager," because according to Defendant/Third-Party Plaintiff's own papers, Port Authority did not retain VRH/Torcon as Managing General Contractor.[2]

It is hereby

ORDERED that the motion by Third-Party Defendant Architcraft, Inc. for summary judgment dismissing the Third-Party Verified Complaint of Defendants/Third-

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[2]Defendant/Third-Party Plaintiff also maintains that American Airlines, Inc. could also be interpreted as the "Owner" because it hired architects for the project. It is unclear how American Airlines, Inc. could be considered an "architect" because it hired architects. Even if this were the case, the contract only defines the "Owner" to include Port Authority's architects, not architects hired by American Airlines, Inc.

Party Plaintiffs American Airlines, Inc., and V.R.H./Torcon, A Joint Venture, is granted; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: November 8, 2004

ENTER:

J.S.C.

EMILY JANE GOODMAN