| **The Board of Managers of the Greenbelt Condominium v 361 Manhattan Ave. LLC** |
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| 2014 NY Slip Op 31958(U) |
| July 24, 2014 |
| Sup Ct, Kings County |
| Docket Number: 501730/13 |
| Judge: Mark I. Partnow |
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At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of June, 2014.

PRESENT:

HON. MARK I. PARTNOW,
Justice.

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THE BOARD OF MANAGERS OF THE GREENBELT CONDOMINIUM, as Agent for, and on Behalf of, the Unit Owners of the Greenbelt Condominium,

Plaintiff,

- against -

Index No. 501730/13

361 MANHATTAN AVENUE LLC d/b/a GREENBELT, DWELLING RESEARCH CORP., DEREK DENCKLA, GREGORY MERRYWEATHER, THOMAS MERRYWEATHER, GREGORY WAY MERRYWEATHER: ARCHITECT, LLC, DESIGN DISCIPLINES ARCHITECTURE, LLC, BRIAN T. GILLEN, R.A., ROBERT SILMAN ASSOCIATES, P.C., NATHANIEL E. OPPENHEIMER, P.E., JKT CONSTRUCTION INC. d/b/a CORCON and JOHN J. CORSO,

Defendants.

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| The following papers numbered 1 to 13 read herein: | Papers Numbered |
|---|---|
| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed | 1-2 6-7, 8 |
| Opposing Affidavits (Affirmations) | 3-4, 5 9 |
| Reply Affidavits (Affirmations) | 10, 11 12 |
| Other Papers Sur-Reply Affirmation | 13 |

Upon the foregoing papers, defendants Gregory Merryweather and Gregory Way Merryweather Architect, LLC (collectively, the Architect Defendants) move, pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7), for an order dismissing the ninth and tenth causes of action for malpractice and negligence, respectively, and all cross claims asserted against

them. Defendants, Robert Silman Associates, P.C. (RSA) and Nathaniel Oppenheimer, P.E. (collectively, the Engineering Defendants), cross-move for an order, pursuant to CPLR 3211 (a) (1), (a) (5) and (a) (7), dismissing the eleventh and twelfth causes of action for malpractice and negligence, respectively, and all cross claims asserted against them.

## *Background*

### *The Greenbelt Condominium Project*

The Board of Managers of the Greenbelt Condominium (Board), commenced this action on behalf of the unit owners of the building at 361 Manhattan Avenue in Brooklyn (Building). The Board seeks $2 million from the sponsor, 361 Manhattan Avenue LLC, d/b/a Greenbelt (Sponsor), and its "professionals" for alleged construction and design defects in the condominium conversion project, by which the one-story commercial Building was enlarged and converted to a five-story, mixed-use commercial and residential condominium (Greenbelt Condominium Project). The Board's complaint alleges that the addition to the Building "was not constructed in a skillful and workmanlike manner" which has resulted in "repeated and continuing water leaks [that] have caused substantial damage to the building's structural and nonstructural elements, as well as significant mold growth" (Complaint ¶ 2).

### *The Offering Plan And Purchase Agreement(s)*

The Greenbelt Condominium, as developed, has one commercial and eight residential units, which were offered for sale pursuant to a condominium Offering Plan (Offering Plan). The Offering Plan states that the Sponsor "will complete the work set forth in this Plan . . .

in conformity with and in accordance with the Building Plans and Specifications, and all applicable New York City Administrative Code requirements" (Offering Plan, p 43, included as part of Exhibit 1-1 to Exhibit 1 [Verified Complaint, herein], annexed to February 4, 2014 Affidavit Of Joel Hockett In Opposition To Motion To Dismiss).

Each purchaser of a unit executed a form Purchase Agreement (Purchase Agreement) with the Sponsor, as seller, which expressly provided that the Offering Plan "is incorporated herein by reference with the same effect as if set forth at length" (Purchase Agreement, p 1, included as part of Exhibit 1-1 to Exhibit 1 [Verified Complaint, herein], annexed to February 4, 2014 Affidavit Of Joel Hockett in Opposition To Motion To Dismiss). Thus, the Sponsor's obligations under the Offering Plan were incorporated into each Purchase Agreement.

The Purchase Agreements included representations by the Sponsor that "[t]he construction of the [B]uilding and the Unit, including the materials, equipment and fixtures to be installed therein, shall be substantially in accordance with the [Offering] Plan and the architectural 'plans and specifications' . . . " (*id.* at 9). The Purchase Agreements also provide that "the construction of the Building and the Unit *and the correction of any defects* in construction to the extent required by the [Offering] Plan *are the sole responsibility of the Sponsor*" (*id.*) (emphasis added).

***The Architect Defendants***

Defendant, Dwelling Research Corporation (DRC), the Sponsor's "manager," engaged the Architect Defendants to provide professional architectural services for the Greenbelt Condominium Project pursuant to a May 1, 2004 "Design Services Agreement" (DSA). The "Scope of Basic Services" that the DSA covered included five phases of the Greenbelt Condominium Project, namely: (1) "Survey/Schematic Design"; (2) "Design Development"; (3) "Construction Documents"; (4) "Bidding and Negotiation"; and (5) "Construction Administration" (DSA, p 1, annexed as Exhibit C to the November 8, 2013 Affirmation of the Architect Defendants' counsel, supporting the Architect Defendants' Motion To Dismiss).

For the "Construction Administration" phase, Exhibit A to the DSA states (on the first page, therein) that the Architect Defendants agreed to "supervise" and "monitor" the construction of the Greenbelt Condominium Project "in order to ensure the accuracy[,] compliance and timeliness of the work." The Architect Defendants also agreed that they would "sign off" on the Greenbelt Condominium Project "after the release of final payment" to the contractors:

> "When the job has reached the level of 'substantial completion', we will make a thorough examination of the work, and issue a 'punch list' of outstanding construction items that must be completed or corrected prior to the contractor receiving final payment. After release of final payment we will 'sign off' on the project" (*id.*).

Thus, under the terms of the DSA, the Architect Defendants' retention was dependent on "comple[tion] or correct[ion]" of outstanding construction items on the punch list.

The DSA has an indemnification provision providing that "[t]he Client agrees to indemnify and hold the Architect [Defendants] harmless for any errors, omissions, delays or other negligent performance on the part of any third party in connection with the [Greenbelt Condominium] Project" (DSA, p 3). In addition, Exhibit A to the DSA provides (on the second page, therein) that the Architect Defendants' liability for the Sponsor's claims of contribution and indemnification "shall not exceed" the Architect Defendants' compensation under the DSA.

***The Engineering Defendants***

Defendant DRC, "acting as manager" for the Sponsor, also retained the Engineering Defendants for the Greenbelt Condominium Project under a July 19, 2004 "Agreement For The Performance of Structural Engineering Services" (Engineering Agreement). Under the heading "Scope of Structural Services," the Engineering Agreement, annexed as Exhibit 1 to the December 10, 2013 Affirmation of the Engineering Defendants' counsel, supporting the Engineering Defendants' Cross Motion To Dismiss, provides (on the cover page, therein):

> "[w]e shall perform structural calculations, produce construction documents, and provide construction administration services (limited to [5]) site visits and shop drawing review) for the four-story addition at the above-captioned address. Scope of the work shall be limited to *the design of the new addition* as well as seismic retrofit required at the existing building. . . ." (emphasis added).

The Engineering Agreement contains an indemnification provision (on the "Terms and Conditions" page):

> "The client shall indemnify and hold harmless RSA and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except RSA), or anyone for whose acts any of them may be liable."

The Engineering Defendants issued a final invoice (No. 57052) to the Sponsor for structural engineering services rendered for the period May 1, 2008 to May 31, 2008. According to the March 14, 2014 affidavit of Nathaniel E. Oppenheimer, P.E., RSA's Executive Vice President and Principal (at p 2, paragraph 6), "RSA was not involved with the application for the Certificate of Occupancy for the Project or any other services after May 2008."

***The Allegedly Defective Construction Work***

Defendant, JKT Construction Inc. d/b/a Corcon (Corcon), was the general contractor for the Greenbelt Condominium Project. The Board alleges that there were "numerous defects" in the construction work and that Corcon: (1) "failed to seal properly the Building's galvanized steel wall panels and the underlying EIFS [i.e., exterior insulation finishing system], resulting in breaches in numerous locations"; (2) "assembled the Building's galvanized steel wall panels and capping in such a way that water was directed into, rather than away from, the interior of the Building"; (3) "did not install the EIFS over the top of the

Building's parapet wall, terminating the EIFS at the top of the Building's side wall"; (4) "failed to finish and seal the parapet walls of the Building"; (5) "failed to install flashing at the junction of the Building's parapet walls and vertical walls"; (6) "placed the metal cap of the Building's siding directly over the exposed frame of the parapet walls, without any overlap to divert water away from the interior of the Building"; (7) "failed to install flashing around the Building's rear skylight"; and (8) "did not follow flashing details for the Building's parapet wall" (Complaint ¶¶ 96-100, 103-106).

***Substantial Completion Of The Greenbelt Condominium Project***

The architectural and engineering plans prepared by the moving Defendants were initially filed with the New York City Department of Buildings (DOB) on or about February 10, 2005 and approved on or about October 18, 2005 (Complaint ¶¶ 50-52). The DOB issued a work permit for the construction on or about January 10, 2006, which was renewed on December 28, 2006, December 13, 2007 and December 2, 2008 (Complaint ¶¶ 92-93).

The Architecture Defendants issued a Certificate of Substantial Completion for the Greenbelt Condominium Project on December 1, 2008 (annexed as Exhibit E to the November 8, 2013 Affirmation of the Architect Defendants' counsel, supporting the Architect Defendants' Motion To Dismiss) indicating (on p 3, therein) that "[a]ll items on the [punch] list accompanying this Certificate and all other such Work that forms part of the Contract Documents shall be completed by no later than Monday, December 22, 2008." The Architect Defendants contend that, for statute of limitations purposes, their "significant (non-ministerial) duties . . . ended with the issuance of said Certificate."

Derek Denckla, a principal of the Sponsor, subsequently sent a March 15, 2010 four-page email to the "Corcon Crew" (annexed as Exhibit 6 to February 4, 2014 Affidavit Of Joel Hockett in Opposition To Motion To Dismiss) requesting remedial work to address the "Developer's field report of multiple conditions found at the site . . ." (*id.* at p1, therein). The March 15, 2010 five-page field report (Field Report) accompanying the email listed "[p]ooling of water," "water leaks" and "water damage" to various locations in the Building, some of which indicated that they were "on Punch List but not cured" (Field Report, pp 1,2). Denckla's email (at p 1, therein) requested a timetable for "inspection and repair" since "many of these items have been unresolved for several months . . ." Denckla's March 15, 2010 email regarding the outstanding punch list items was copied to the Architect Defendants.

There were a total of fourteen amendments to the architectural and engineering plans filed with the DOB, the last of which was filed with the DOB on or about March 16, 2010 (Complaint ¶¶ 53-54). The DOB allegedly approved the final amendment to the plans on or about March 25, 2010 and a final Certificate of Occupancy was issued for the Building on April 8, 2010 (Complaint ¶¶ 55-56).

***The Instant Action***

The Board commenced the instant action on April 5, 2013 against the Sponsor, DRC, Denckla, the Architect Defendants, the Engineering Defendants, Corcon and others, alleging that "[m]any shortcuts were taken during construction, resulting in water entering, and in some cases actually being diverted into, the interior of the structure" (Complaint ¶ 2).

The Board asserts two causes of action against the Architect Defendants for professional malpractice (ninth cause of action) and negligence (tenth cause of action) (Complaint ¶¶ 220-236). The ninth cause of action for professional malpractice alleges that the Architect Defendants:

> "were responsible for supervising certain aspects of the construction of the Building to the extent of ensuring the Work conformed to the architectural plans, specifications and drawings . . . prepared for the Alteration, and
>
> "breached their duty of care to Sponsor by failing to ensure the Work conformed to the architectural plans, specifications and drawings . . . prepared for the Alteration" (Complaint ¶¶ 223, 225).

The Board's tenth cause of action for negligence practically mirrors the foregoing allegations (*see* Complaint ¶¶ 231, 235). The Board asserts nearly identical malpractice and negligence claims (eleventh and twelfth causes of action) against the Engineering Defendants.

***The Architect Defendants' Motion to Dismiss***

*(1)*

The Architect Defendants move to dismiss the ninth and tenth causes of action on the grounds that they are "completely refuted by the documentary evidence" (Architect Defendants' Memorandum of Law, p 2, annexed as Exhibit A to November 8, 2013 Affirmation in Support of Architects' Counsel); (2) fail to state a cause of action upon which relief may be granted (*id.*); and (3) are barred by the three-year statute of limitations (*id.*). The Architect Defendants contend that dismissal, pursuant to CPLR 3211 (a) (7), is warranted because no privity exists between them and the Board (*id.* at 20-26). Specifically, the Architect Defendants contend that the Board's "various claims for construction defects

are surely considered economic loss under New York law" which is "barred in New York absent privity of contract, or its functional equivalent (*id.* at 19)."

The Architect Defendants further argue that the complaint is time-barred and should be dismissed, pursuant to CPLR 3211 (a) (5), because the three-year statute of limitations has expired (*id.* at 29-31). The Architect Defendants contend that the Board's negligence claim accrued upon the termination of the professional relationship, which "occurs when the designer 'completes the . . . significant (i.e., non-ministerial) duties under the parties' contract'" (*id.* at 29). The Architect Defendants claim that their professional relationship with the Sponsor terminated when they issued the Certificate of Substantial Completion on December 1, 2008, despite the fact that there were outstanding punch list items at that time (*id.* at 30-31).

As a final basis for dismissal, the Architect Defendants contend that the Board cannot maintain causes of action for both negligence and malpractice because "[i]t stands to reason that a design professional cannot be held to both the standards for a professional and those not of a professional" (*id.* at 32). The Architect Defendants' moving papers, except in their notice of motion, do not address that branch of their motion seeking to dismiss all cross claims.

*(2)*

The Board primarily opposes the Architect Defendants' motion on the grounds that it is based on a "hearsay" attorney affirmation without "any evidence in admissible form" (Board's Memorandum of Law, pp 1, 5-16). The Board contends that the DSA and the

Certificate of Substantial Completion, annexed to the affirmation of the Architect Defendants' counsel, cannot serve as the basis for dismissal because they are unauthenticated by Gregory Merryweather, the architect who "allegedly signed the above-referenced documents" (*id.* at 10).

The Board further argues that "there is no documentary evidence showing when the Moving Defendants 'signed off' on the [Greenbelt Condominium] project in accordance with Paragraph 05 of Exhibit A to the 'design services agreement'" (internal citation omitted) (*id.*). The Board submitted emails regarding "water issues" at the Building to establish that Gregory Merryweather "was actively involved in resolving the persistent water leaks that have plagued the Building since its construction" (*id.* at 10-11). The Board contends that there are "issues of fact concerning when (a) the construction of the Building was actually complete . . . and (b) the Moving Defendants ceased performing construction administration services" (*id.* at 11).

Finally, the Board counters the Architect Defendants' "notion" that they are not liable to the Board, as a matter of law, because privity or its functional equivalent is lacking (*id.* at 14). Specifically, the Board argues that dismissal is unwarranted "at this stage in the litigation"(*id.* at 15) because Denckla allegedly "declared that the Board is the Sponsor's successor-in-interest" (*id.* at 14) and the Board has a relationship with the Moving Defendants that so closely approximates privity . . ." (*id.* at 15). According to the Board, "[d]isclosure is necessary to understand the contours of the parties' relationships, which seem

to overlap and, due to the lack of any admissible proof from the Moving Defendants, cannot be determined on the present record" (*id.*).

*(3)*

Corcon submitted partial opposition to the Architect Defendants' dismissal motion, contending that its cross claims "should continue and be deemed or converted to third-party claims" even if the Board's professional malpractice and negligence claims are dismissed (Affirmation in Partial Opposition of Corcon's Counsel, p 2). That partial opposition affirmation argues that the Architect Defendants' moving submissions "do not address, much less support, any argument concerning dismissal of any cross claims" (*id.* at 5).

The partial opposition affirmation also notes (at pp 2-3, therein) that there are alleged design defects at the Building, which are supported by the report prepared by Brian E. Flynn, PE PC after a July 15, 2011 inspection of the water damage at the Building (Flynn Expert Report). The Flynn Expert Report opines that "[t]he leakage into Apartment 4B was dependent on wind driven rain to penetrate *a poorly designed capping* to allow the water to simply drain down the inside of the wall once past the capping" (emphasis added) (*id.* at 3).

*(4)*

The Architect Defendants, in reply to the partial opposition, contend that Corcon has no right to cross-claim against them because they have not yet answered the complaint (Affirmation in Reply of Counsel for Architect Defendants to Partial Opposition, ¶ 4). The Architect Defendants cryptically argue (in ¶¶ 5-13) that: (1) Corcon cannot seek contribution for damages arising out of the Board's claims for economic loss; (2) "there is no right to

contractual indemnification by the Corcon Defendants" without a contract (id. at ¶ 10); and (3) a claim for common-law indemnification is precluded "where the indemnitee is alleged to have actually participated to some degree [in] the wrongdoing and is not being asked to answer vicariously for the wrongdoing of another" (*id.* at ¶ 12).

Regarding the Board, the Architect Defendants reiterate (in ¶ 5 of their counsel's separate March 17, 2014 Affirmation in Reply to the Board's opposition) that its tort claims are subject to dismissal, as a matter of law. More specifically, they argue that dismissal should occur because the Board seeks recovery for economic loss, which (as argued in an accompanying Memorandum Of Law In Reply, p 10, annexed as Exhibit A to the separate March 17, 2014Affirmation in Reply) is "not recoverable for 'damages caused by the negligence of an architect or engineer with whom [the Board] is not in privity of contract.'" They further rely (at p 10 of their Memorandum Of Law In Reply) on the Court of Appeals' holding in *Sykes v RFD Third Avenue 1 Assoc., LLC* (15 NY3d 370 [2010]), to argue that "the functional equivalent of privity does **not** exist between a unit owner and a sponsor's design professional with respect to the design and construction of a condominium."

The Architect Defendants further contend that the Board's claims against them are time-barred because "[p]laintiff, in its complaint and opposition papers, has failed to establish any further involvement by the Moving Defendants . . . with the project following the issuance of the Certificate of Substantial Completion on December 1, 2008 . . ." (Memorandum Of Law In Reply, p 5).

***The Engineering Defendants' Cross Motion to Dismiss***

The Engineering Defendants cross-move to dismiss the Board's eleventh and twelfth causes of action for malpractice and negligence, respectively, on the same legal grounds as the Architect Defendants instant motion, stating that they "incorporate[ ] the arguments set forth in the [Architect Defendants'] Motion and adopt[ ] them herein" (Affirmation In Support of Engineering Defendants' Cross Motion To Dismiss, ¶ 11).

The Engineering Defendants also seek dismissal in their notice of motion of the indemnification and contribution cross claims asserted against them, but do not otherwise address the cross claims in their cross motion papers.

***Discussion***

*(1)*

In considering a motion to dismiss, pursuant to CPLR 3211 (a) (7), for failure to state a cause of action, "the pleadings must be liberally construed" and "[t]he sole criterion is whether from [the complaint's] four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Gershon v Goldberg*, 30 AD3d 372, 373 [2006], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Dinerman v Jewish Bd. of Family & Children's Servs., Inc.*, 55 AD3d 530, 531 [2008]; *Morone v Morone*, 50 NY2d 481, 484 [1980]; *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]).

The court may consider affidavits and other evidentiary material submitted by the movant to establish conclusively that no viable causes of action exist (*Simmons v Edelstein*,

32 AD3d 464, 465 [2006]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]). A court considering a motion to dismiss must both accept as true the allegations in the complaint and afford the plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *see also Great Eagle Intl. Trade, Ltd. v Corporate Funding Partners, LLC*, 104 AD3d 731 [2013]). In essence, the court must determine whether the alleged causes of action are sustainable "upon any reasonable view of the facts as stated" (*Schneider v Hand*, 296 AD2d 454, 454 [2002]; *see also Manfro v McGivney*, 11 AD3d 662, 663 [2004]).

*(2)*

"The allegations of negligence appearing in the complaint are based on defects in the construction of the condominium and, as such, sound in breach of contract rather than tort" (*Sutton Apts. Corp.* 36 Misc 3d 1205[A] at *5, citing *Gallup v Summerset Homes, LLC*, 82 AD3d 1658 [2011]; *Hamlet on Olde Oyster Bay Home Owners Assoc., Inc. v Holiday Org., Inc.*, 65 AD3d 1284 [2009]; *Stardial Communications Corp. v Turner Constr. Co.*, 305 AD2d 126 [2003]; *Rothstein v Equity Ventures*, 299 AD2d 472 [2002]). Since "[s]imply alleging a duty of care does not transform a breach of contract [claim] into a tort claim" (*Clemens Realty, LLC v New York City Dept. of Educ.*, 47 AD3d 666, 667 [2008] [internal quotation marks and citation omitted]), the Board has no viable negligence cause of action against the Architect or the Engineering Defendants (*The Bd. of Managers of the Lore Condominium v Gaetano*, 2012 NY Slip Op 32654[U] [Sup Ct, NY County 2012]). In other words, the Board's negligence claims against the professional moving defendants are

unsustainable because the movants did not owe a legal duty to the unit owners (*see e.g. Friedman v Anderson* 23 AD3d 163, 164 [2005]).

Furthermore, it is well-established that absent privity or the equivalent, a condominium board's claim for architectural or engineering malpractice is subject to dismissal (*see e.g. 905 5th Assoc. v Weintraub*, 85 AD3d 667, 668 [2011], citing *Bd. of Mgrs. of Yardarm Beach Condominium v Vector Yardarm*, 109 AD2d 684 [1985], *appeal dismissed* 65 NY2d 998 [1985]; *see also Bd. of Mgrs. of NV 101 N 5th St. Condominium v Morton*, 39 Misc 3d 1212[A] at *12, 2013 NY Slip Op 50575[U] [Sup Ct, Kings County 2013], citing *Weintraub*, 85 AD3d at 668).

Contrary to the Board's contention, the allegation that its members are "successors" to the Sponsor is insufficient to establish the requisite contractual privity with the Architect or Engineering Defendants (*see e.g. Sutton Apts. Corp. v Bradhurst 100 Dev. LLC*, 36 Misc 3d 1205[A], 2012 NY Slip Op 31671[U] [Sup Ct, NY County 2012] [dismissing unit owner breach of contract claim against architect despite argument that unit owner was sponsor's successor]). Accordingly, the Board's malpractice and negligence claims against the Architect Defendants (ninth and tenth causes of action) and the Engineer Defendants (eleventh and twelfth causes of action) are subject to dismissal, as a matter of law.

*(3)*

Finally, the Architect Defendants and the Engineering Defendants have failed to make a prima facie showing that dismissal of the cross claims asserted against them is warranted. Accordingly, it is hereby

**ORDERED** that the branch of the Architect Defendants' motion, pursuant to CPLR 3211 (a) (7) to dismiss the negligence and malpractice claims against them (ninth and tenth causes of action, respectively) for failure to state a cause of action is granted; and it is further

**ORDERED** that the branch of the Architect Defendants' motion to dismiss the indemnification and contribution cross claims asserted against them is denied; and it is further

**ORDERED** that the branch of the Engineering Defendants' motion, pursuant to CPLR 3211 (a) (7), to dismiss the negligence and malpractice claims against them (eleventh and twelfth causes of action, respectively) for failure to state a cause of action is granted; and it is further

**ORDERED** that the branch of the Engineering Defendants' motion to dismiss the indemnification and contribution cross claims asserted against them is denied; and it is further

**ORDERED** that the remaining branches of the Architect Defendants' motion and the Engineering Defendants' cross motion to dismiss the complaint against each of them, respectively, are each denied as moot.

This constitutes the decision and order of the Court.

E N T E R,

J. S. C.

HON. MARK I PARTNOW
SUPREME COURT JUSTICE