Johnson v Dormitory Auth. of the State of N.Y.
2017 NY Slip Op 30234(U)
January 5, 2017
Supreme Court, Suffolk County
Docket Number: 12-14200
Judge: W. Gerard Asher
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SHORT FORM ORDER

INDEX No. 12-14200
CAL. No. 15-01282OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 32 - SUFFOLK COUNTY

PRESENT:

Hon. W. GERARD ASHER
Justice of the Supreme Court

MOTION DATE 10-16-15 (005)
MOTION DATE 11-30-15 (006 007 008)
ADJ. DATE 03-29-16
Mot. Seq. # 005 - MG # 007 - MotD
006 - MG # 008 - MG

---X

KEBRA JOHNSON,

Plaintiff,

- against -

DORMITORY AUTHORITY OF THE STATE OF NEW YORK, and J. KOKOLAKIS CONTRACTING INC.,

Defendants.

---X

J. KOKOLAKIS CONTRACTING INC.,

Third-Party Plaintiff,

- against -

CANATAL STEEL USA, INC.,

Third-Party Defendant.

---X

CANATAL STEEL USA, INC.,

Second Third-Party Plaintiff,

- against -

LOW BID, INC.,

Second Third-Party Defendant.

---X

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Upon the following papers numbered 1 to 93 read on these motions for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 12, 13 - 30, 31 - 52 ; Notice of Cross Motion and supporting papers 51 - 71 ; Answering Affidavits and supporting papers 72 - 73, 74 - 75, 76 - 77, 78 - 79, 80 - 81, 82 - 85 ; Replying Affidavits and supporting papers 86 - 87, 88 - 89, 90 - 91, 92 - 93 ; Other Plaintiff's Memorandum of Law ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion (#005) by plaintiff Kebra Johnson, the motion (#006) by defendant/second third-party plaintiff Canatal Steel USA Inc., and the motion (#007) by defendant/third-party plaintiff J. Kokolakis Contracting, Inc. are consolidated for the purposes of this determination; and it is

ORDERED that the motion by plaintiff Kebra Johnson for partial summary judgment in his favor on the issue of liability with respect to his Labor Law §240(1) claim is granted; and it is

ORDERED that the motion by defendant/second third-party plaintiff Canatal Steel USA Inc. for, inter alia, summary judgment on its third-party claim for contractual indemnification as against third-party defendant Low Bid, Inc. is granted to the extent indicated herein, and is otherwise denied; and it is

ORDERED that the motion by defendant/third-party plaintiff J. Kokolakis Contracting, Inc. seeking conditional summary judgment on its third-party contractual indemnification claim against Low Bid is granted; and it is

ORDERED that the cross motion by defendant/third-party plaintiff J. Kokolakis Contracting, Inc. seeking conditional summary judgment on its third-party contractual indemnification claim against defendant/second third-party plaintiff Canatal Steel USA Inc. is granted.

Plaintiff Kebra Johnson commenced this action to recover damages for personal injuries he allegedly sustained on September 13, 2001 while working on the construction of a new campus center on the grounds of the Farmingdale State College, State University of New York. Plaintiff, who was performing structural steel framing work, allegedly was injured when he fell from an elevated crane on which he was standing. While he was attempting to steady a steel joist that was being hoisted toward him, plaintiff lost his balance and fell approximately 17 feet to the ground. The owner of the worksite was defendant Dormitory Authority of the State of New York. It hired defendant/third-party plaintiff J. Kokolakis Contracting, Inc. ("Kokolakis") as the general contractor for the project. Kokolakis then hired third-party defendant/second third-party plaintiff Canatal Steel USA Inc. ("Canatal") to fabricate and erect structural steel for the framing of the new building. Subsequently, Canatal hired plaintiff's employer, second third-party defendant Low Bid, Inc. ("Low Bid"), to perform the structural steel framing services. By way of his complaint, plaintiff alleges causes of action against defendants for common law negligence and violations of Labor Law §§ 200, 240 (1), and 241(6).

Kokolakis and the Dormitory Authority joined issue denying plaintiff's claims and asserting affirmative defenses. Afterwards, Kokolakis commenced a third-party action against Canatal, and Canatal commenced a second third-party action against Low Bid. Kokolakis also brought a third third-

party action against Low Bid. On or about November 10, 2014, plaintiff executed a stipulation discontinuing the action against Dormitory Authority. Thereafter, the parties filed the note of issue on July 9, 2015. Plaintiff now moves for partial summary judgment with respect to his Labor Law §240 (1) claim on the ground Kokolakis failed to provide him with adequate safety devices designed to prevent or break his fall, and that such failure was the proximate cause of his injuries. Canatal, Kokolakis, and Low Bid all oppose plaintiff's motion on the basis triable issues exist as to whether plaintiff refused to obey directions by his supervisor to use safety harnesses or lanyards that were available at the worksite and, if so, whether plaintiff's refusal to do so was the sole proximate cause of his injuries.

By way of a separate motion, Canatal moves for conditional summary judgment on its third-party claims against Low Bid, arguing that Low Bid is contractually obligated to indemnify and insure it against Kokolakis' claims. Additionally, Canatal argues that Kokolakis' third-party claims against it violate the anti-subrogation rule and must be dismissed, since Canatal's conduct did not cause or augment plaintiff's injuries, it served as a mere subcontractor on the project, and it obtained adequate insurance naming Kokolakis as an additional insured. Low Bid opposes Canatal's motion on the grounds triable issues exist as to whether Canatal's negligence played a role in causing the accident and, if so, whether it is precluded from obtaining contractual indemnification. Kokolakis also moves for summary judgment on its third-party contractual indemnification claim against Low Bid, arguing that Low Bid's agreement with Canatal requires it to indemnify Kokolakis against plaintiff's claims. Low Bid opposes both motions on the ground triable issues exist as to whether Kokolakis and Canatal retained some control over plaintiff's safety practices at the time of the accident and, if so, whether their negligence contributed to the happening of the accident.

Additionally, Kokolakis cross-moves for summary judgment on its third-party claims against Canatal. Kokolakis argues, inter alia, that pursuant to its subcontract agreement, Canatal is contractually obligated to defend, indemnify and hold it harmless against claims arising out of the performance of its work, including work performed by any entity directly or indirectly engaged by it, particularly the work of its subcontractor, Low Bid. Canatal opposes the motion, arguing, inter alia, that a triable issue exists as to whether Kokolakis was negligent in failing to ensure its own worksite safety plan was followed by Low Bid's employees, including plaintiff; that the subject indemnification agreement is unenforceable, because it improperly attempts to indemnify Kokolakis against its own negligence; and that the accident did not arise out of Canatal's work during the project, which was limited to the delivery of steel to the worksite. Further, Canatal asserts that it obtained additional insurance coverage for Kokolakis, and that the proper platform for Kokolakis to dispute a reservation of rights letter it received from the insurer is a declaratory action against said insurer.

It is well settled that on a motion for summary judgment the function of the court is to determine whether issues of fact exist and not to resolve issues of fact or determine matters of credibility (*see* ***Doize v Holiday Inn Ronkonkoma***, 6 AD3d 573, 574, 774 NYS2d 792 [2d Dept 2004]). Furthermore, facts that are alleged by the nonmoving party and all inferences which may be drawn from them must be accepted as true (*see* ***O'Neill v Town of Fishkill***, 134 AD2d 487, 488, 521 NYS2d 272 [2d Dept 1987]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see*

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Alvarez v Prospect Hosp., 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]; ***Andre v Pomeroy***, 35 NY2d 361, 362 NYS2d 131 [1974]). Once the movant meets this burden, the burden shifts to the opposing party to show by tender of sufficient facts in admissible form that triable issues remain which preclude summary judgment (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316). However, in opposing a summary judgment motion, mere conclusions, unsubstantiated allegations or assertions are insufficient to raise triable issues of fact (*see* ***Zuckerman v New York***, 497 NYS2d 557, 404 NE2d 718 [1980]).

Labor Law § 240 (1) imposes absolute liability upon owners and contractors who fail to provide or erect safety devices necessary to give proper protection to workers exposed to elevation-related hazards such as falling from a height (*see* ***Misseritti v Mark IV Constr. Co.***, 86 NY2d 487, 634 NYS2d 35 [1995]; ***Rocovich v Consolidated Edison Co.***, 78 NY2d 509, 577 NYS2d 219 [1991]). Specifically, it requires that safety devices, including scaffolds, hoists, stays, ropes or ladders be so "constructed, placed and operated as to give proper protection to a worker" (***Klein v City of New York***, 89 NY2d 833, 834, 652 NYS2d 723 [1996]). To prevail on a claim pursuant to Labor Law § 240 (1), a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries (*see* ***Bland v Manocherian***, 66 NY2d 452, 497 NYS2d 880 [1985]; ***Sprague v Peckham Materials Corp.***, 240 AD2d 392, 658 NYS2d 97 [2d Dept 1997]). Where an employee has been provided with an elevation-related safety device, it is usually a question of fact as to whether the device provided proper protection (*see* ***Beesimer v Albany Ave/Rte. 9 Realty***, 216 AD2d 853, 629 NYS2d 816 [3d Dept 1995]), "except in those instances where the unrefuted evidence establishes that the device collapsed, slipped or otherwise failed to perform its function of supporting the worker" (***Briggs v Halterman***, 267 AD2d 753, 754-755, 699 NYS2d 795 [3d Dept 1999]; *see* ***Gordon v Eastern Ry. Supply***, 82 NY2d 555, 562, 606 NYS2d 127 [1993]). Thus, "[t]he availability of a particular safety device will not shield an owner or general contractor from absolute liability if the device alone is not sufficient to provide safety without the use of additional precautionary devices or measures" (***Conway v New York State Teachers' Retirement Sys.***, 141 AD2d 957, 958-959, 530 NYS2d 300 [3d Dept1988]; *see* ***Whalen v Sciame Constr. Co.***, 198 AD2d 501, 502, 604 NYS2d 174 [2d Dept 1993]).

Here, plaintiff demonstrated, prima facie, that he was injured as a result of a gravity-related accident, and that defendants' failure to ensure he was provided with adequate safety devices designed to prevent or break his fall was the proximate cause of his injuries (*see* ***Zimmer v Chemung County Performing Arts, Inc.***, 65 NY2d 513, 493 NYS2d 102 [1985]; ***Vetrano v. J. Kokolakis Contr., Inc.***, 100 AD3d 984, 954 NYS2d 646 [2d Dept 2012]; ***Murray v Arts Ctr. & Theater of Schenectady, Inc.***, 77 AD3d 1155, 910 NYS2d 187 [3d Dept 2010]; ***DiMuro v Town of Babylon***, 210 AD2d 373, 620 NYS2d 114 [2d Dept 1994]; ***Desrosiers v Barry, Bette & Led Duke, Inc.***, 189 AD2d 947, 592 NYS2d 826 [3d Dept 1993]). Although plaintiff testified that he was wearing a safety harness at the time of the alleged accident, his testimony also revealed that there was no safety line or other anchor devices available for him to tie-off his harness. The unavailability of any safety lines or anchors was confirmed in an affidavit by nonparty witness Edward Kondraski, which states, among other things, that there were no safety lines or static lines erected on the elevated steel structure to which either of himself or plaintiff could have connected their harnesses. In opposition, defendants failed to raise a triable issue warranting denial of the motion (*see* ***Winegrad v New York Univ. Med. Ctr.***, *supra*; ***Zuckerman v New York***, *supra*).

Defendants failed to submit any evidence that plaintiff knew or should have known that he was expected to anchor his safety harness to some other structure or anchor and chose for no good reason not to do so (*see* ***Gallagher v New York Post***, 14 NY3d 83, 896 NYS2d 732 [2010]; ***Murray v Arts Ctr. & Theater of Schenectady, Inc.***, *supra*). Moreover, the fact that OSHA regulations did not require plaintiff to be tied off at the height from which he fell is unavailing, as it well established that compliance with OSHA regulations does not defeat a prima facie showing of Labor Law § 240 (1) liability (*see* ***Murray v Arts Ctr. & Theater of Schenectady, Inc.***, *supra* at 156; ***Dalaba v City of Schenectady***, 61 AD3d 1151, 1153, 876 NYS2d 744 [3d Dept 2009]). Accordingly, plaintiff's motion for partial summary judgment on the issue of liability with respect to his Labor Law §240 (1) claim is granted.

Turning to Canatal's motion for summary judgment on its third-party complaint against Low Bid, the subcontract between the parties states, in relevant part, as follows:

> To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, General Contractor, Contractor, Architect, Architect's consultants and agents and employees to any of them from and against claims, damages, losses and expenses, including but not limited attorney's fees and costs and attorney's fees incurred in enforcing Subcontractor's obligations set forth in section 4.6.1, arising out of or resulting from performance of the Subcontractor's work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury

New York's Worker's Compensation Law §11 permits third-party indemnification claims against employers where such claim is based upon a provision in a written contract entered into prior to the accident by which the employer expressly agreed to indemnification (*see* ***Rodrigues v N&S Blg. Contrs. Inc.***, 5 NY3d 427, 805 NYS2d 299 [2005]; ***Majewski v Broadalbin-Perth Cent. School Dist.***, 91 NY2d 577, 673 NYS2d 966 [1998]). Moreover, General Obligations Law §5-322.1 does not prohibit contractual indemnification where, as here, the parties agreement requires indemnification "[t]o the fullest extent of the law"(*see* ***Brooks v Judlau Contr. Inc.***, 11 NY3d 204, 869 NYS2d 366 [2008]; ***Ulrich v Motor Parkway Props., LLC***, 84 AD3d 1221, 924 NYS2d 493 [2d Dept 2011]). "A court may render a conditional judgment on the issue of contractual indemnity, pending determination of the primary action in order that the indemnitee may obtain the earliest possible determination as to the extent to which he or she may expect to be reimbursed provided there are no issues of fact concerning the indemnitee's active negligence" (*see* ***George v Marshalls of MA, Inc.***, 61 AD3d 931, 932, 878 NYS2d 164 [2d Dept 2009]; ***O'Brien v Key Bank***, 223 AD2d 830, 831, 636 NYS2d 182 [3d Dept 1996]). To obtain conditional relief on a claim for contractual indemnification, "the one seeking indemnity need only establish that it was free from any negligence and [may be] held liable solely by virtue of ... statutory [or vicarious] liability. Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (***Correia v Professional Data Mgt.***, 259 AD2d 60, 65, 693 NYS2d 596 [1st Dept 1999]; *see* ***Jamindar v Uniondale Union Free School Dist.***, 90 AD3d 612, 934 NYS2d 437 [2d Dept 2011]).

Here, Canatal established its prima facie entitlement to summary judgment on its third-party claim for contractual indemnification against Low Bid by demonstrating that it did not actively cause the accident, and that its alleged negligence is purely vicarious under Labor Law §240(1) (*see* ***Bermejo v New York City Health & Hosps. Corp.***,119 AD3d 500, 989 NYS2d 490 [2d Dept 2014]; ***Mouta v Essex Mkt. Dev. LLC***, 106 AD3d 549, 966 NYS2d 13 [1st Dept 2013]; ***Jamindar v Uniondale Union Free School Dist.***, *supra*; ***McKeighan v Vassar Coll.***, 53 AD3d 831, 862 NYS2d 396 [3d Dept 2008]; ***Correia v Professional Data Mgt.***, *supra*). Significantly, plaintiff testified that his work was exclusively controlled by Low Bid's foreman, George McNaulty, and that he never heard of Canatal or spoke with any of its employees prior to his accident. Additionally, Canatal employee Francois Croteau testified that while Canatal supplied structural steel for the project, it subcontracted the installation and erection of the steel to Low Bid, and played no role in determining the means and methods of its work. Low Bid failed to raise any triable issues in opposition, as it failed to adduce any evidence that Canatal was actively negligent in causing plaintiff's accident (*see* ***Palomeque v Capital Improvement Servs., LLC***, 102 AD3d 934, 958 NYS2d 602 [2d Dept 2013]), or that its indemnification claim was barred by General Obligations Law §5-322.1 (*see* ***Brooks v Judlau Contr. Inc.***, *supra*). Therefore, the branch of Canatal's motion seeking conditional judgment on its third-party claim against Low Bid for contractual indemnification is granted.

Further, inasmuch as it has been determined that Canatal was not actively at fault in bringing about plaintiff's injuries or augmenting such injuries, the branch of its motion seeking dismissal of the third-party claims against it by Kokolakis for contribution and/or common law indemnification is granted (*see* ***McCarthy v Turner Constr., Inc.***, 17 NY3d 369, 929 NYS2d 556 [2011]; ***Guzman v Haven Plaza Housing Dev. Fund Co.***, 69 NY2d 559, 516 NYS2d 451 [1987]; ***Marquez v L & M Dev. Partners, Inc.***, 141 AD3d 694, 35 NYS3d 700 [2d Dept 2016]; ***Torres v LPE Land Dev. & Constr.***, 54 AD3d 668, 863 NYS2d 477 [2d Dept 2008]; ***Delahaye v Saint Anns School***, 40 AD3d 679, 836 NYS2d 233 [2d Dept 2007]; ***DiMarco v New York City Health & Hosps. Corp.***, 187 AD2d 479, 480, 589 NYS2d 580 [2d Dept 1992]). Additionally, to the extent that the same insurer covers Canatal and Kokolakis against the same risk, the anti-subrogation rule applies, and Kokolakis' third-party contractual indemnification claim against Canatal for any damages awarded to plaintiff will be restricted to the limits of their common liability insurance policy (*see* ***Storms v Dominican College of Blauvelt***, 308 AD2d 575, 765 NYS2d 882 [2d Dept 2003]; ***Yong Ju Kim v Herbert Constr. Co.***, 275 AD2d 709, 713 NYS2d 190 [2d Dept 2000]).

Nevertheless, Canatal failed to meet its prima facie burden on the branch of its motion seeking dismissal of Kokolakis' third-party contractual indemnification claim against it. "The right to contractual indemnification depends upon the specific language of the contract" (***George v Marshalls of MA, Inc.***, 61 AD3d 925, 930, 878 NYS2d 143 [2009]; *see* ***Martinez v City of New York***, 73 AD3d 993, 998-999, 901 NYS2d 339 [2010]). Moreover, "[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (***Correia v Professional Data Mgt.***, *supra* at 65), and contractual indemnification will not be barred pursuant to General Obligations Law §5-322.1 where the agreement in question requires indemnification "[t]o the fullest extent of the law"(*see* ***Brooks v Judlau Contr. Inc.***, *supra*; ***Ulrich v Motor Parkway Props., LLC***, *supra*).

The subcontract between Canatal and Kokolakis provides, as follows:

> To the fullest extent permitted by the law, Subcontractor shall defend, indemnify, and hold harmless Owner, Contractor, Architect, and consultants, agents and employees of any of them . . . from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or in any way connected with the performance or lack of performance of the work under the agreement . . . provided that any such claim, damage, liability, loss or expense attributable to bodily injury, sickness, disease, or death, or physical injury [is] caused in whole or part by any actual or alleged:
>
> •Act or omission of the Subcontractor or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable; or
>
> •Violations of any statutory duty, regulation, ordinance, rule or obligation by an Indemnitee provided that the violation arises out of or is any way connected with Subcontractor's performance or lack of performance of the work under the agreement

Contrary to Canatal's assertion that the contractual indemnification claim against it should be dismissed because the accident did not arise out of its work, the parties' broad indemnification clause provides for indemnification against all claims of bodily injury arising out of or in any way connected with the provision and installation of structural steel for the project. In addition, the agreement evinces indemnification against all claims of bodily injury caused by the act or omission of Canatal or anyone directly or indirectly retained by it, which includes the acts or omissions of its subcontractor, Low Bid (*see* ***Amante v Pavarini McGovern, Inc.***, 127 AD3d 516, 8 NYS3d 54 [1st Dept 2015]; ***Lipari v AT Spring, LLC***, 92 AD3d 502, 938 NYS2d 303 [1st Dept 2012]; ***Naughton v City of New York***, 94 AD3d 1, 940 NYS2d 21 [1st Dept 2012]; ***Cunningham v Alexander's King Plaza, LLC***, 22 AD3d 703, 803 NYS2d 125 [2d Dept 2005]; ***Walls v Sano-Rubin Constr. Co.***, 4 AD3d 599, 771 NYS2d 603 [3d Dept 2004]). Therefore, the branch of Canatal's motion for summary judgment dismissing Kokolakis' third-party contractual indemnification claim against it is denied. The branch of Canatal's motion seeking summary judgment on its claim that Low Bid's insurer improperly denied it coverage is likewise denied, as the proper remedy for such a claim is the commencement of a declaratory judgment action against the insurer to determine coverage (*see* ***Hunt v Ciminelli-Cowper Co., Inc.***, 66 AD3d 1506, 887 NYS2d 395 [4th Dept 2009]; ***Kielar v Metropolitan Museum of Art***, 55 AD3d 456, 866 NYS2d 629 [1st Dept 2008]).

With respect to Kokolakis' motion for summary judgment on its third-party contractual indemnification claim against Low Bid, as the general contractor and beneficiary of the above-mentioned hold harmless provision, Kokolakis established its prima facie entitlement to summary judgment by submitting evidence that it was free from any negligence, and that its liability for the alleged accident, if any, is vicarious (*see* ***Bermejo v New York City Health & Hosps. Corp.***,*supra*; ***Mouta v Essex Mkt. Dev. LLC***, *supra*; ***Jamindar v Uniondale Union Free School Dist.***, *supra*; ***McKeighan v Vassar Coll.***,

supra; ***Giangarra v Pav-Lak Contr., Inc.***, 55 AD3d 869, 866 NYS2d 332 [2d Dept 2008]). Significantly, plaintiff's work was exclusively controlled by Low Bid. Kokolakis also submitted evidence that it played no role in determining the means and methods of plaintiff's work, and that it exercised mere general supervisory authority over the worksite at the time of the accident. In particular, Kokolakis' Vice President, Nicholas Leo, testified that Kokolakis' role at the project was limited to ensuring the work proceeded on schedule and was in accordance with contract. He further testified that the subcontractors were exclusively responsible for determining the means and methods of their own work. In opposition, Low Bid failed to raise a triable issue requiring denial of the motion, as Kokolakis' retention of general supervisory control, its presence at the work site, or its authority to enforce safety standards, is insufficient to establish the liability that would defeat Kokolakis' third-party claim for contractual indemnification (*see* ***Gunderman v Sure Connect Cable Installation, Inc.***, 101 AD3d 1214, 956 NYS2d 211 [3d Dept 2012]; ***Biance v Columbia Wash. Ventures, LLC***, 12 AD3d 926, 785 NYS2d 144 [3d Dept 2004]). Accordingly, the motion by Kokolakis seeking conditional summary judgment on its third-party contractual indemnification claim against Low Bid is granted.

Having determined that Kokolakis' liability, if any, is vicarious, and that Canatal is required to provide indemnification against claims of bodily injury which arise out of the work of its subcontractor, Low Bid, the court also grants the cross motion by Kokolakis for summary judgment on its third-party claim for contractual indemnification against Canatal (*see* ***Bermejo v New York City Health & Hosps. Corp.***,*supra*; ***Mouta v Essex Mkt. Dev. LLC***, *supra*; ***Jamindar v Uniondale Union Free School Dist.***, *supra*; ***McKeighan v Vassar Coll.***, *supra*; ***Giangarra v Pav-Lak Contr., Inc.***, *supra*). Canatal's opposition, which consists of arguments already addressed above, is insufficient to defeat Kokolakis' prima facie showing. Accordingly, the cross motion by Kokolakis for conditional summary judgment on its third-party contractual indemnification claim against Canatal is granted.

Dated: Jan. 5, 2017

W. Gerard Asher
J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**