

**Cathedral Gardens Condominium Assn. v 110th St.  
Equities, LLC**

2018 NY Slip Op 31195(U)

June 13, 2018

Supreme Court, New York County

Docket Number: 600175/2009

Judge: William Franc Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. W. FRANC PERRY, J.S.C.

PART 23

CATHEDRAL GARDENS CONDOMINIUM ASSOCIATION,  
THE COLLEGE BOARD OF MANAGERS OF CATHEDRAL  
GARDEMS CONDOMINIUM, and THE NON-COLLEGE  
BOARD OF MANAGERS OF CATHEDRAL GARDENS  
CONDOMINIUM

Plaintiffs

INDEX NO. 600175/2009

MOT. DATE May 17, 2018

- v -

110th STREET EQUITIES, LLC, ARTIMUS CONSTRUCTION  
INC., and ROTHZEID KAISERMAN THOMPSON & BEE, PC,  
Defendants

MOT. SEQ. NO. 004 and 005

And a Third-Party Action and Second Third-Party Action

The following papers were read on this motion to Dismiss Second Third-Party Complaint

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS DOC No(s). <u>1</u>
Answering Affidavits — Exhibits	ECFS DOC No(s). <u>2</u>
Replying Affidavits	ECFS DOC No(s). <u>3</u>

This is a property damage action arising out of alleged construction defects in plaintiffs’ building. In Motion Sequence No. 004, second third party defendants, Chris Sideris and Chris Sideris, P.E. P. C., (hereinafter “Sideris”), move for an order pursuant to CPLR §3211(a)(1), (5) and (7), and CPLR §3211(h), dismissing the Second Third Party Complaint, alleging that Second Third Party Plaintiff Rothzeid Kaiserman Thompson & Bee, PC, (hereinafter “RKTb”), cannot state a legally cognizable claim for indemnification and contribution. In the alternative, Sideris moves to sever the third-party claims against it pursuant to CPLR §1010. RKTb opposes the motion.

In Motion Sequence No. 005, third party defendants Russell C. Jordan and Russell C. Jordan Architect, (hereinafter “Jordan”), move to dismiss the Second Third Party Complaint, pursuant to CPLR §3211(a)(1) and (7) and §3211(h), for failure to state a claim; and for sanctions against RKTb for commencing and continuing a frivolous third party action. In the alternative, Jordan moves to sever and stay discovery of the third-party claims against it pursuant to CPLR §1010. RKTb opposes the motion. The motions are consolidated for disposition. For the reasons that follow, Motion Sequence No. 004 is granted in part and Motion Sequence No. 005 is granted in part.

**FACTUAL BACKGROUND and CONTENTIONS**

Plaintiffs, Cathedral Gardens Condominium Association, by its Board of Managers, (“Joint Board”), commenced this action on behalf of the unit owners against defendants 110<sup>th</sup> Street Equities LLC, Artimus Construction Inc., (hereinafter “Artimus” and/or “Sponsor”), and RKTb, seeking to recover for property damage arising out of alleged construction defects in plaintiffs’ buildings. (Frigenti Aff., Ex. A). Artimus constructed a building comprising a nine-story tower (the “South Tower”) and a fifteen-story tower (the “North Tower”), which includes twenty-five one and two bedroom apartments and accommodations for ninety-one students in single and double rooms in four to six person suites. (Frigenti Aff., Ex. A, ¶¶7 and 8). Artimus sold part of the building to Barnard College for use as faculty housing and a student dormitory, and sold another part of the building, consisting of twenty-five residential units, to individuals pursuant to a condominium offering plan. (Frigenti Aff., Ex. A, ¶9). The building was

completed in 2006 and all twenty-five apartments were sold with the first group of Barnard College students moving into the building in September 2006. (Frigenti Aff., Ex. A, ¶10).

Artimus hired RKTB as the architect to provide design services in connection with the construction of the building. It is alleged that the design and construction of the building was deficient and not in compliance with the applicable building, fire safety, energy and other codes and was not built in accordance with the filed plans and specifications. (Frigenti Aff., Ex. A, ¶¶12-15). Plaintiffs further allege that as part of the Offering Plan the Sponsor stated that RKTB had been retained to perform design of the building and to perform professional architectural services to ensure that the building was properly designed and constructed without defects in a good and workmanlike manner. (Frigenti Aff., Ex. A, ¶¶41-44).<sup>1</sup>

In response to RKTB's Demand for a Bill of Particulars, plaintiffs allege as a component of their damages, mechanical ventilation deficiencies against RKTB. (Fuert Aff., Ex. E, ¶6). RKTB contends that discovery in this action was delayed from March 2011 to October 2015 due to plaintiffs and certain defendants' substitution of counsel, and court ordered stays of discovery to allow certain parties to participate in mediation. (Fuert Aff., Exs. F and G). On May 4, 2017, RKTB filed and served a Second Third Party Complaint against Sideris and Jordan, alleging, *inter alia*, claims for contribution and common law indemnity. (Frigenti Aff., Ex. C).

Sideris is an engineering firm retained in 2004 by defendant 110<sup>th</sup> Street Equities LLC to provide professional engineering design services for the Cathedral Gardens building project. (Sideris Aff., dated June 14, 2017). The contract entered into between Sideris and 110<sup>th</sup> Street Equities LLC, provides that, "We [Sideris] shall perform the New York City Controlled Inspection for Mechanical Ventilation only." (Sideris Aff., dated June 14, 2017, Ex. 1, ¶B.4). Sideris contends that it was not responsible for and did not provide supervision for the project; it did not retain any contractors who performed any services on the project and was not responsible for site supervision at the building project. (Sideris Aff., dated June 14, 2017). Sideris completed its services in June 2005.

Jordan was a construction consultant for the Community Preservation Corporation ("CPC"), a non-profit affordable housing and community revitalization finance company. (Jordan Aff., dated June 29, 2017). The Cathedral Gardens building project obtained financing through CPC. (Jordan Aff., dated June 29, 2017). Jordan's work for CPC was limited to providing recommendations as to whether CPC should approve funding requisitions. (Jordan Aff., dated June 29, 2017). In November 2005, Jordan, was asked by CPC to inspect the Cathedral Gardens building project, review a payment requisition and to provide a professional consulting certification to CPC that the work requisitions had been completed. (Jordan Aff., dated June 29, 2017).

In connection with CPC's request, Jordan visited the site and performed an inspection on November 14, 2005 and on November 22, 2005, submitted a Site Observation Report for the building project for use by CPC to determine whether to extend additional financing. (Jordan Aff., dated June 29, 2017, Ex. A). Jordan contends that any certification contained in the November report, was provided for the sole purpose of ascertaining whether additional financing should be extended by CPC for the Cathedral Gardens building project. (Jordan Aff., dated June 29, 2017). Jordan contends that it was not retained by RKTB or any of the plaintiffs herein to provide any certification or expert opinion and as such, Jordan argues that it owed no duty to RKTB or any other party. Moreover, Jordan contends that the express language of its certification report provided that all reports "are intended for the sole use by the Lender

<sup>1</sup> On April 22, 2011, the court granted RKTB's motion to dismiss plaintiffs' seventh cause of action alleging breach of contract; although plaintiffs were granted leave to file an amended complaint; to date plaintiffs have not filed an amended complaint. (Fuert Aff., Exs. B and C).

in connection with the Construction Loan and are not to be relied on for any other use or use by other parties.” (Jordan Aff., dated June 29, 2017, Ex. A, p. 6).

In opposition to Jordan’s motion to dismiss, RKTB claims Jordan has not met its burden under CPLR §3211(a)(1) and (a)(7), as it failed to submit documentary evidence in support of its motion and that Jordan has not shown that it did not certify that the building project was substantially complete in compliance with the New York City Building Code and that the drawings, plans and specifications were free from material defects. Additionally, RKTB contends that the economic loss doctrine does not bar its claims for contribution, and that it has a valid claim for indemnity against Jordan because RKTB denies any wrongdoing and alleges that it is being held vicariously liable for the acts of Jordan. Finally, RKTB contends that it has not engaged in frivolous conduct and there is no basis for sanctions to be imposed.

In support of its motion to dismiss the Second Third Party Complaint, Sideris contends that RKTB’s claims for contribution and indemnity are legally insufficient and cannot withstand a motion to dismiss because there is no contract between RKTB and Sideris for the work; RKTB was not responsible for services provided by Sideris at the project; RKTB did not enter into any contracts with any design professionals; and RKTB’s services were to provide architectural services only and not mechanical services such as the ventilation system.

In opposition to Sideris’ motion to dismiss, RKTB claims that Sideris has not met its burden under CPLR §3211(a)(1) and (a)(7), as it failed to submit documentary evidence in support of its motion and that Sideris’ unsigned work proposal supports RKTB’s claims seeking indemnification and contribution. Additionally, RKTB contends that plaintiff’s allegations in its Bill of Particulars, demonstrates that RKTB may seek indemnification and contribution from Sideris, for plaintiff’s claimed damages, and that alternatively, RKTB argues that Sideris’ motion should be denied pursuant to CPLR §3211(a)(7) and RKTB should be allowed to conduct discovery as to the scope and performance of services that Sideris performed with respect to the building project.

## STANDARD OF REVIEW/ANALYSIS

"On a motion to dismiss the complaint pursuant to CPLR 3211 (a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (quotations omitted)." *East Hampton Union Free School Dist. v Sandpebble Builders, Inc.*, 66 AD3d 122, 125, 884 N.Y.S.2d 94 (2nd Dept. 2009), *aff'd*, 16 NY3d 775, 944 N.E.2d 1135, 919 N.Y.S.2d 496 (2011), quoting *Breyman v Olinville Realty, LLC*, 54 AD3d 703, 703-704, 864 N.Y.S.2d 70 (2nd Dept. 2008) *lv. dismiss.*, 12 N.Y.3d 878, 910 N.E.2d 1002, 883 N.Y.S.2d 173 (2009), citing *Leon v Martinez*, 84 NY2d 83, 87, 638 N.E.2d 511, 614 N.Y.S.2d 972 (1994); *Smith v Meridian Technologies, Inc.*, 52 AD3d 685, 686, 861 N.Y.S.2d 687 (2nd Dept. 2008). "Thus, a motion to dismiss-made pursuant to CPLR 3211(a)(7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law (quotations omitted)." *East Hampton Union Free School Dist. v Sandpebble Builders, Inc.*, *supra*, at p. 125, quoting *Shaya B. Pacific, LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38, 827 N.Y.S.2d 231 (2nd Dept. 2006); *Leon v Martinez*, *supra*, at p. 87-88; *Fisher v DiPietro*, 54 AD3d 892, 894, 864 N.Y.S.2d 532 (2nd Dept. 2008); *Clement v Delaney Realty Corp.*, 45 AD3d 519, 521, 845 N.Y.S.2d 423 (2nd Dept. 2007).

"A party sued solely for its own alleged wrongdoing, rather than on a theory of vicarious liability, cannot assert a claim for common law indemnification" *TOV Mfg., Inc. v Jaco Import Corp.*, 123 A.D.3d 477 (1<sup>st</sup> Dept. 2014); (*Mathis v Central Park Conservancy*, 251 AD2d 171, 172, 674 NYS2d 336

[1998]]; (see *Trump Vil. Section 3 v New York State Hous. Fin. Agency*, 307 AD2d 891, 895, 764 NYS2d 17 [2003], *lv denied* 1 NY3d 504, 807 N.E.2d 893, 775 N.Y.S.2d 780 [2003]). Indemnity only lies where one who has done no wrong is nevertheless held liable solely due to another's negligence. *Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 646, 524 N.E.2d 413, 529 N.Y.S.2d 59 (1988). "Since the predicate of common law indemnity is vicarious liability without actual fault on the part of the proposed indemnitee, it follows that '[a] party who has itself actually participated to some degree in the wrongdoing cannot receive, the benefit of the doctrine.'" *Trump Village Section 3, Inc. v New York State Housing Finance Agency*, supra, at p. 895, quoting *Trustees of Colombia University in City of N.Y. v Mitchell/Giurgola Associates*, 109 AD2d 449, 453, 492 N.Y.S.2d 371 (1st Dept. 1985); see also, *Broyhill Furniture Industries, Inc. v Hudson Furniture Galleries, LLC*, 61 AD3d 554, 877 N.Y.S.2d 72 (1st Dept. 2009).

Contribution is available under CPLR 1401 where "two or more persons . . . are subject to liability for damages for the same personal injury, injury to property or wrongful death." "[A] defendant may seek contribution from a third party even if the injured plaintiff has no direct right of recovery against that party" and "even when the contributor has no duty to the injured plaintiff (citations omitted)." *Raquet v. Braun*, 90 N.Y.2d 177, 182, 681 N.E.2d 404, 659 N.Y.S.2d 237 (1997); see also, *Klinger v Dudley*, 41 NY2d 362, 361 N.E.2d 974, 393 N.Y.S.2d 323 (1977); *Sommer v Federal Signal Corp.*, 79 NY2d 540, 559, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992). A contribution claim may be asserted if there has been a breach of a duty that runs from the contributor to the defendant who has been held liable (citations omitted). *Raquet v. Braun*, supra, at p. 182; see also, *Guzman v Haven Plaza Housing Development Fund Co., Inc.*, 69 NY2d 559, 568, n.5, 509 N.E.2d 51, 516 N.Y.S.2d 451 (1987). "The 'critical requirement' for apportionment by contribution under CPLR article 14 is that 'the breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought.'" *Raquet & Braun*, supra, at p. 182-183, quoting *Nassau Roofing & Sheet Metal Co. v Facilities Development Corp.*, 71 NY2d 599, 603, 523 N.E.2d 803, 528 N.Y.S.2d 516 (1988).

### Motion Sequence No. 004

In support of its motion to dismiss the second third party complaint brought by RKTB, Sideris argues that RKTB cannot establish a *prima facie* cause of action for common law indemnification or contribution against Sideris. Sideris contends that RKTB ignores the fact that plaintiffs in the underlying action are seeking to hold RKTB directly liable for its own active wrongdoing rather than seeking to hold it vicariously liable for the actions or omissions of Sideris. A review of the pleadings and submissions in support of the instant motion demonstrate that RKTB cannot maintain a cause of action against Sideris for indemnification.

It is axiomatic that a party sued for its own alleged wrongdoing, rather than on a theory of vicarious liability cannot assert a claim for common law indemnification. *Gap Inc. v. Fisher Dev. Inc.*, 27 AD3d 209, 212 (1st Dept. 2006); *Dormitory Authority of the State of New York v. Scott*, 160 AD2d 179 (1st Dept. 1990). RKTB relies on plaintiffs' Bill of Particulars to support its theory that the indemnification cause of action against Sideris has merit as plaintiffs seek to hold RKTB vicariously liable for the actions of Sideris. Based upon a review of the Bill of Particulars, however, it is clear that plaintiffs have not sought to hold RKTB vicariously liable for the actions or omissions of the other named defendants but rather, have asserted direct claims against RKTB for architectural malpractice. (Fuerth Aff. in Opp. to Sideris' Motion to Dismiss, Ex. E). Inasmuch as "[a] party sued solely for its own alleged wrongdoing, rather than on a theory of vicarious liability, cannot assert a claim for common law indemnification" *TOV Mfg., Inc. v. Jaco Import Corp.*, 123 A.D.3d 477 (1st Dept. 2014), it follows that RKTB's claim for indemnification as alleged in the second third-party complaint, lacks merit, as plaintiffs' claims against RKTB, are based on RKTB's own alleged wrongdoing.

RKTB asserts that it had no responsibility for the ventilation system; it did not have a contract with or retain Sideris to conduct any work on its behalf; and RKTB contends that it was solely responsible for architectural services and not the mechanical engineering services related to the building project. Additionally, the complaint does not contain any allegations that RKTB delegated exclusive responsibilities to Sideris with respect to any of plaintiffs' claims. The record demonstrates that Sideris was retained by defendant 110<sup>th</sup> Street to provide mechanical, electrical and plumbing design services for the building project, and that plaintiffs' allegations concerning construction defects and architectural malpractice against RKTB are based on RKTB's alleged wrongdoing. Indemnity only lies where one who has done no wrong is nevertheless held liable solely due to another's negligence. *Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 646, 524 N.E.2d 413, 529 N.Y.S.2d 59 (1988). As such, RKTB is not entitled to common law indemnification against Sideris and the cause of action seeking indemnification is dismissed.

As noted above, contribution is available under CPLR 1401 where "two or more persons . . . are subject to liability for damages for the same personal injury, injury to property or wrongful death." Here, Sideris is seeking to dismiss RKTB's contribution claim on the basis that plaintiffs were granted leave to replead its breach of contract claim against RKTB and that the damages sought against RKTB are purely for economic loss. A claim for contribution against a design professional will not be barred by the economic loss doctrine where the design professional "may be subject to tort liability for failure to exercise reasonable care, irrespective of [its] contractual duties." *Castle Vil. Owners Corp. v Greater New York Mut. Ins. Co.*, 58 AD3d 178, 185 [1st Dept 2008]. See also, *Tower Building Restoration, Inc. v. 20 East 9<sup>th</sup> Apartment Corp.*, 295AD2d 229 (1<sup>st</sup> Dept. 2002) (professionals may be subject to tort liability for an alleged failure to exercise reasonable care, irrespective of their contractual duties, and therefore, a contribution claim may be asserted).

Sideris' argument that the contribution claim asserted by RKTB must be dismissed because the damages sought against RKTB are solely for economic losses, ignores the fact that plaintiffs have alleged a violation of RKTB's professional duty and damages flowing therefrom. That claim forms the basis for a valid contribution claim by RKTB against Sideris, to the extent that RKTB can prove that, in the event RKTB is found liable to plaintiffs for damages, those damages were contributed to by Sideris' alleged negligence or breach of duty in performing its design services, controlled inspection of the mechanical ventilation system and certifying the October 7, 2005 TR-1. *Schauer v. Joyce*, 54 NY2d 1 (1981); (Sideris Aff., dated June 14, 2017, Ex. 1, ¶B.4; Fuerth Aff., dated August 1, 2017, Ex. K). RKTB "may be subject to tort liability for failure to exercise reasonable care, irrespective of [its] contractual duties" (*Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 551, 583 N.Y.S.2d 957, 593 N.E.2d 1365 [1992]), and the damages sought by plaintiffs here are not limited to the benefit of the bargain (see *Tower Bldg. Restoration v. 20 E. 9th St. Apt. Corp.*, 295 A.D.2d 229, 229, 744 N.Y.S.2d 319 [2002]).<sup>2</sup> Accordingly, Sideris' motion to dismiss RKTB's contribution claim is denied.

### Motion Sequence No. 005

In Motion Sequence No. 005, Jordan seeks dismissal of RKTB's second third party complaint contending that it does not allege that Jordan owed any duty to the First Party Plaintiffs, which is an essential component of its claim for contribution. Similarly, Jordan contends that the Second Third Party

<sup>2</sup> Sideris' argument that RKTB has not complied with CPLR §3211(h) because the notice of claim was addressed to Jordan and not Sideris is belied by the record. (See NYSCEF Doc. No. 96). CPLR §3211 (h) permits claims against engineers arising from work performed more than ten years before the claim is interposed. Moreover, RKTB has demonstrated that many of the delays in this action were not caused by dilatory tactics of RKTB but rather, related to a delay from March 2011 to October 2015 due to plaintiffs and certain defendants' substitution of counsel and court ordered stays of discovery to allow certain parties to participate in mediation. (Fuerth Aff., Exs., F and G). As such, Sideris' laches argument in support of its motion to dismiss lacks merit.

Complaint does not allege the existence of any relationship between RKTB and Jordan, which is a prerequisite to RKTB's claim for indemnification.

Just as RKTB could not maintain a claim for indemnification against Sideris, similarly it cannot maintain an indemnification claim against Jordan because New York law requires a party seeking common law indemnification to demonstrate that plaintiffs in the main action are only attempting to hold the defendant liable on a theory of vicarious liability. *TOV Mfg., Inc. v. Jaco Import Corp.*, 123 A.D.3d 477 (1<sup>st</sup> Dept. 2014); (*Mathis v Central Park Conservancy*, 251 AD2d 171, 172, 674 NYS2d 336 [1998]); (see *Trump Vil. Section 3 v New York State Hous. Fin. Agency*, 307 AD2d 891, 895, 764 NYS2d 17 [2003], *lv denied* 1 NY3d 504, 807 N.E.2d 893, 775 N.Y.S.2d 780 [2003]). Indemnity only lies where one who has done no wrong is nevertheless held liable solely due to another's negligence. *Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 646, 524 N.E.2d 413, 529 N.Y.S.2d 59 (1988).

As noted, a review of the pleadings here demonstrates that plaintiffs are seeking to hold RKTB liable for its own alleged wrongdoing in connection with the construction and design of the building. Established precedent demonstrates that RKTB cannot seek indemnification against Jordan for its own alleged negligence and as such, the cause of action seeking indemnity against Jordan fails to state a claim and must be dismissed. *TOV Mfg., Inc. v. Jaco Import Corp.*, 123 A.D.3d 477 (1<sup>st</sup> Dept. 2014).

Similarly, RKTB's cause of action seeking contribution from Jordan must be dismissed as there is no evidence in the record to establish the degree of privity required to support a contribution claim against Jordan. *Garrett v. Holiday Inns*, 58 NY2d 253, 258 (1983); nor is there any proof that any alleged breach of duty by Jordan "had a part in causing or augmenting the injury for which contribution is sought." *Raquet & Braun*, supra, at p. 182-183, quoting *Nassau Roofing & Sheet Metal Co. v Facilities Development Corp.*, 71 NY2d 599, 603, 523 N.E.2d 803, 528 N.Y.S.2d 516 (1988). Here, Jordan was hired by CPC to monitor the construction and to report back to CPC regarding whether CPC should continue to loan funds for the construction project. The construction monitor's certificate of completion upon which RKTB bases its claim is addressed to CPC and was provided to RKTB by an agent of Artimus Construction, not Jordan.

RKTB does not dispute that neither it nor plaintiffs had any direct interaction, communication or oral or written agreement with Jordan or that Jordan's sole involvement in the project was in his capacity as a consultant for CPC. Instead, RKTB relies on a single 2005 facsimile transmittal from Artimus Construction to RKTB which contained the Construction Monitor's Certificate of Completion that was provided by Jordan to CPC. (See *Bafitis Aff.*, Ex. "A"). RKTB does not allege any facts to establish that plaintiffs relied on Jordan's Certificate of Completion to its detriment, that Jordan was aware or intended that documents provided to CPC would be relied upon by RKTB or plaintiffs, or that Jordan evinced an understanding of any purported reliance. To the contrary, the record demonstrates that plaintiffs did not rely on Jordan, the bank's engineer, but rather relied on RKTB whom they had retained as the architect for the building project. (*Frigenti Aff.*, Ex. E, p. 149, l. 7 – p. 150, l. 2).

Unlike Sideris, who was retained by defendant 110<sup>th</sup> Street to provide professional engineering design services and admits that it provided design plans for the mechanical ventilation system at the building project and certified compliance with the designs and applicable codes, Jordan provided consulting services only to CPC. (*Sideris Aff.*, dated June 14, 2017, Ex. 1). The record demonstrates that any certification contained in Jordan's November report, was provided for the sole purpose of ascertaining whether additional financing should be extended by CPC for the Cathedral Gardens building project. (*Jordan Aff.*, dated June 29, 2017). Moreover, Jordan has demonstrated that the express language of its certification report provided that all reports "are intended for the sole use by the Lender in connection with the Construction Loan and are not to be relied on for any other use or use by other parties." (*Jordan Aff.*, dated June 29, 2017, Ex. A, p. 6). Based on this record, RKTB cannot state a valid claim for con-

NYSCEF DOC. NO. 256

RECEIVED NYSCEF: 06/13/2018

tribution against Jordan. See generally, *Sykes v. RFD Third Avenue 1 Associates, LLC*, 67 AD3d 162, 167 (1<sup>st</sup> Dept. 2009), *aff'd*, 15 NY3d 370, 373 (2010).<sup>3</sup> Accordingly, Jordan's motion to dismiss the second third party complaint is granted.

**CONCLUSION**

Based on the foregoing, motion sequence no. 004 is granted in part, to the extent that the second cause of action seeking indemnification against second third party defendants Chris Sideris and Chris Sideris, P.E., P.C., is dismissed; the motion seeking dismissal of the first cause of action seeking contribution from second third party defendant Chris Sideris and Chris Sideris, P.E., P.C., is denied.

Motion sequence no. 005 seeking to dismiss the second third party complaint against second third party defendants Russell C. Jordan and Russell C. Jordan Architect and for sanctions and attorneys' fees is granted in part, to the extent that the second third party complaint is dismissed as against second third party defendants Russell C. Jordan and Russell C. Jordan Architect, and is otherwise is denied. Accordingly, it is

**ORDERED** that motion sequence no. 004 to dismiss the second third party complaint against second third party defendant Chris Sideris and Chris Sideris, P.E., P.C., is granted in part and the second cause of action seeking indemnification against second third party defendant Chris Sideris and Chris Sideris, P.E., P.C., is dismissed; and it is further

**ORDERED** that second third party defendants Chris Sideris and Chris Sideris, P.E., P.C., are directed to serve an answer to the second third party complaint, first cause of action, within 20 days after service of a copy of this order with notice of entry; and it is further

**ORDERED** that motion sequence no. 005 to dismiss the second third party complaint against second third party defendants Russell C. Jordan and Russell C. Jordan Architect, is granted and the second third party complaint against second third party defendants Russell C. Jordan and Russell C. Jordan Architect, is dismissed.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

Dated: June 13, 2018  
New York, New York

  
HON. W. FRANC PERRY, J.S.C.

- 1. Check one:  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check as appropriate: Motion is  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. Check if appropriate:  SETTLE ORDER  SUBMIT ORDER  DO NOT POST  
 FIDUCIARY APPOINTMENT  REFERENCE

<sup>3</sup> Jordan's motion seeking an award of sanctions and attorneys' fees against RKT B is denied as the court finds that RKT B has not engaged in conduct to delay the resolution of the action, nor has it used the legal process to harass Jordan. See, *Good Old Days Tavern, Inc. v. Zwirn*, 261 AD2d 288, 289 (1<sup>st</sup> Dept. 1999).