

<b>Sao Fernando Intl., Ltd. v Debbane</b>
2019 NY Slip Op 30889(U)
April 4, 2019
Supreme Court, New York County
Docket Number: 150260/2011
Judge: Kelly A. O'Neill Levy
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**KELLY O'NEILL LEVY  
JSC**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 19**

-----X

SAO FERNANDO INTERNATIONAL, LTD.,

Plaintiff,

- v -

RAYMOND DEBBANE, BBR1, INC., NOISETTER, INC. d/b/a  
MACASSAR WOOD WORK, and DIDIER BARROIS, individually,  
and RICHARD SMITH d/b/a RICHARD SMITH STUDIOS,

Defendants.

**INDEX NO.** 150260/2011

**MOTION DATE** 12/05/2018

**MOTION SEQ. NO.** 007, 008, 009,  
and 10

**DECISION AND ORDER**

-----X

THE BOARD OF MANAGERS OF 515 PARK AVENUE  
CONDOMINIUM, acting on behalf of all unit owners of  
the condominium,

Plaintiff,

- v -

BBR1, INC. and RICHARD SMITH d/b/a  
RICHARD SMITH STUDIOS,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 374, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 410, 411, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446

were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 008) 347, 348, 349, 350, 351, 352, 353, 375, 385, 386, 387, 401, 412, 413, 452

were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 009) 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 376, 378, 379, 380, 381, 382, 383, 384, 402, 414, 415, 447, 448, 449, 450, 451

were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 10) 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 370, 371, 372, 373, 377, 403, 404, 405, 406, 407, 408, 409

were read on this motion to/for

SUMMARY JUDGMENT

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HON. KELLY O'NEILL LEVY:

Motion sequence numbers 007, 008, 009, and 10 are hereby consolidated for disposition.

This is a consolidated action arising from property damage caused by a fire.

Defendant Richard Smith d/b/a Richard Smith Studios (hereinafter, Richard Smith) moves (mot. seq. 007) for an order, pursuant to CPLR § 3212, granting summary judgment in his favor as to the actions *Sao Fernando International, Ltd. v. Raymond Debbane et al.* (Index No. 150260/2011) (hereinafter, the Sao Fernando action) and *The Board of Managers of 515 Park Avenue Condominium v. BBR1, Inc. et ano.* (Index No. 155362/2012) (hereinafter, the Board of Managers action), consolidated actions in this matter, and dismissing the complaints in both actions as to Richard Smith. Plaintiff The Board of Managers of 515 Park Avenue Condominium (hereinafter, the Board of Managers), defendant Raymond Debbane, defendant BBR1, Inc. (hereinafter, BBR1), and plaintiff Sao Fernando International, Ltd. (hereinafter, Sao Fernando) oppose.

Defendant Noisettier, Inc. d/b/a Macassar Wood Work and Didier Barrois (collectively, hereinafter, Didier Barrois) move (mot. seq. 008) for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the Sao Fernando action and all claims and cross-claims against them. Richard Smith and Sao Fernando oppose.

BBR1 moves (mot. seq. 009) for an order, pursuant to CPLR § 3212, granting summary judgment in its favor in the Sao Fernando action and the Board of Managers action, dismissing all claims and cross-claims asserted against it in both actions with prejudice. Richard Smith and Sao Fernando oppose.

Raymond Debbane moves (mot. seq. 10) for an order, pursuant to CPLR § 3212, granting summary judgment in his favor, dismissing the third-party action as against him in the Board of Managers action. Richard Smith opposes.

### BACKGROUND

On June 21, 2010, there was a fire at 515 Park Avenue, Apartment 7A in Manhattan (hereinafter, the apartment). The apartment was owned by Raymond Debbane and was undergoing renovations at the time of the fire. The fire did not start until after the renovation work was completed for the day and the workers had left the apartment. Sao Fernando alleges that the defendants performed their work in a negligent manner which resulted in causing a fire at the apartment. The Board of Managers alleges that the fire resulted from the defendants' negligence in leaving the burner of the stove on in proximity to combustible material.

The FDNY Bureau of Fire Investigation investigated the fire and issued a Fire Incident Report, which states that the fire originated from combustible material (paper) in the heat of an open flame on the stove in the kitchen of the apartment [Fire Incident Report (ex. II to the Skoczen aff.)].

Fire Marshal John Colabatistto, the Fire Marshal assigned to determine the origin and cause of the fire, testified that he had no reason to doubt the accuracy of his note that the right rear burner was on when the FDNY arrived at the apartment [Deposition of Fire Marshal John Colabatistto (ex. Y to the O'Hara aff.) at 48-49]. He concluded the fire was caused by paper combustibles burning on an open flame over the stove (*id.* at 57, 59).

In or about 2010, Mr. Debbane entered into an alteration agreement with the Board of Managers pursuant to which he performed renovations of the apartment. Mr. Debbane retained several contractors to perform the renovations. Mr. Debbane testified that he and his wife,

Carmen Debbane, stayed at the apartment the night before the fire [Deposition of Raymond Debbane (ex. OO to the Skoczen aff.) at 23, 25]. He left the apartment in the morning of June 21, 2010 (*id.* at 24-25). He did not know what caused the fire (*id.* at 33-34). He testified that he and his wife had not used the kitchen on the day of the fire [Second Deposition of Raymond Debbane (ex. L to the Seidman aff.) at 36]. The kitchen was not functional at the time (*id.* at 46).

Ms. Debbane testified that she was in the apartment reviewing paint samples with the painter on the day of the fire approximately from noon until 3:30 p.m. [Deposition of Carmen Debbane (ex. SS to the Skoczen aff.) at 22, 81]. She noted that Richard Smith and two of his freelancers were the only people working in the apartment at the time she left (*id.* at 22, 49). She did not see Mr. Smith or his freelancers in the kitchen (*id.* at 52). She had seen contractors working on the kitchen floor on the day of the fire, but they had left the apartment before her (*id.* at 24-25, 82-83). Ms. Debbane testified that she saw one of Mr. Smith's freelancers smoking in the apartment on more than one occasion, but not on the day of the fire (*id.* at 57-59, 101). She also had seen cigarette butts in the apartment on prior occasions (*id.* at 101). She did not smell cigarette smoke in the apartment on the day of the fire (*id.* at 60).

Javier Esteban Perez, a supervisor for BBR1 at the time of the fire, testified that BBR1 was retained to work on the bathroom and kitchen floors of the apartment [Deposition of Javier Esteban Perez (ex. PP to the Skoczen aff.) at 14]. He testified that a grinder was last used in the apartment on June 18, 2010 to scrape the kitchen floor so they could glue the tiles to the existing floor (*id.* at 23-24, 26). After they finished scraping the kitchen floor, they vacuumed the dust and removed the plastic (*id.* at 27-28, 30). On the day of the fire, BBR1 had not used or plugged in the grinder (*id.* at 33, 69). It had laid down tiles in the kitchen, and to prevent anyone from stepping on the tiles, Mr. Perez placed a wet saw in the entrance of the kitchen to block access to

the kitchen (*id.* at 39, 41-42, 54). Before leaving the apartment on the day of the fire, he told Mr. Smith and his freelancers not to enter the kitchen (*id.* at 65-66). He recalled seeing one of Mr. Smith's freelancers on a previous day smoking a cigarette outside on the street (*id.* at 37). On the day of the fire, BBR1 employees left the apartment at around 1:00 p.m. (*id.* at 57). Mr. Perez did not smell gas or see a fire on that day (*id.* at 46). Mr. Perez never turned on the stove in the apartment (*id.* at 60). Roger David, the President of BBR1, confirmed that the grinder was not used on the day of the fire [Deposition of Roger David (ex. Z to the O'Hara aff.) at 19, 82-83].

Richard Smith, the principal of Richard Smith Studios, testified that he was retained to paint certain areas of the apartment [Deposition of Richard Smith (ex. QQ to the Skoczen aff.) at 59-62]. He had two freelance painters, Jessica Kase and Eleanor Swordy, aiding him with his work (*id.* at 17-18). Mr. Smith recalled that on the day of the fire, there was a barrier at the entrance of the kitchen to prevent anyone from entering (*id.* at 31). He testified that the tile workers had left the apartment on the day of the fire approximately one hour before he and his freelancers had left (*id.* at 100). Mr. Smith also recalled that Ms. Debbane was in the kitchen on the day of the fire (*id.* at 38-39, 43). Mr. Smith could not recall how or whether he and his freelancers cleaned their brushes on the day of the fire, but he stated that they did not go in the kitchen (*id.* at 121-122). Mr. Smith did not recall ever seeing his freelancers smoking in his presence (*id.* at 20, 25). They left the apartment on the day of the fire at around 5:00 p.m. (*id.* at 46). Mr. Smith also submitted an affidavit confirming that he did not enter the kitchen on the date of the fire [Affidavit of Richard Smith (ex. UU to the Skoczen aff.) at ¶ 4]. He had never seen Ms. Kase, Ms. Swordy, or any other worker smoking on the date of the fire (*id.* at ¶ 12, 13).

Ms. Swordy testified that when she worked in the apartment, other workers had advised that the kitchen was off limits [Deposition of Eleanor Swordy (ex. RR to the Skoczen aff.) at 26].

She stated that there was no reason for them to go into the kitchen (*id.*). She confirmed that she is not a smoker and was not a smoker at the time of the fire (*id.* at 23).

Ms. Kase submitted an affidavit attesting that neither she nor Ms. Swordy entered the kitchen at any time during her work at the apartment [Affidavit of Jessica Kase (ex. VV to the Skoczen aff.) at ¶ 9]. She stated that neither she nor Mr. Smith or Ms. Swordy smoked in the apartment at any time (*id.* at ¶ 12, 13). She recalls that they were unable to clean the paintbrushes in the apartment, so they returned to Mr. Smith's studio to clean them (*id.* at ¶ 15).

John F. Goetz, a certified fire investigator retained by Affiliated FM Insurance Company, the property insurer for the Board of Managers, as a fire origin and cause investigator, concluded that (1) the fire originated in combustibles on the stovetop at or near the location of a gas burner that was left in the "on" position or by cigarettes discarded in combustible materials in the kitchen and (2) given the timeline of events, the fire was caused by the actions or omissions of the last persons to leave the apartment, Richard Smith and his freelancers, in leaving the burner in the "on" position or carelessly discarding cigarettes at about 5:00 p.m. on the day of the fire [Affidavit of John F. Goetz (ex. C to the Seidman aff.) at ¶ 15]. Mr. Goetz also stated that since the tile workers from BBR1 left in the early afternoon and the fire was discovered by the sprinkler activation at about 5:45 p.m., a fire from sparks would have ignited a fire much sooner (*id.* at ¶ 6). One of the control knobs on the stove was melted and its position could not be determined (*id.*). He stated that according to the fire investigation information from Fire Marshal John Colabatistto, the BBR1 tile workers left the apartment at 2:30 p.m., Richard Smith left at 5:00 p.m., and that FDNY discovered one burner on when they responded to the fire scene after an alarm sounded at about 5:45 p.m. (*id.* at ¶ 9). He ruled out BBR1's grinder as a potential source of ignition, given BBR1's testimony that it was not used on the day of the fire (*id.* at ¶

11). Mr. Goetz concluded that a burner on the stove was left on by the actions or omissions of Richard Smith or his freelancers on the day of the fire because between about 3:30 p.m. and 5:00 p.m., Mr. Smith and his freelancers were the only persons left in the apartment, and they may have been in the kitchen to clean their paint brushes and thereafter caused one burner on the stove top to be left on, either by accident or because they were using the stovetop to light cigarettes (*id.* at ¶ 14[g]). Mr. Goetz ruled out Ms. Debbane's responsibility in causing the fire, as she left the apartment at 3:30 p.m. on the day of the fire, and a fire caused by her actions would have ignited sooner (*id.*). Mr. Goetz hypothesized that a discarded cigarette by Richard Smith or one of his freelancers could have caused the fire (*id.* at ¶ 14[h]).

On the record at the oral argument for the present motions, counsel for Didier Barrois stated that he has settled with Sao Fernando. Also, on the record at the oral argument for the present motions, counsel for BBR1 stated that it has settled with Sao Fernando and the Board of Managers, and they have stipulated to discontinue the actions against BBR1 with prejudice.

### DISCUSSION

On a summary judgment motion, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that material factual issues exist. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment

is issue-finding, rather than making credibility determinations or factual findings. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 (2012).

*Motion Sequence 007: Richard Smith's Motion for Summary Judgment*

Richard Smith moves for summary judgment in his favor as to the Sao Fernando action and the Board of Managers action and dismissal of the complaints in both actions as against him.

Richard Smith asserts that the plaintiffs' claims against him are based entirely on speculation and that they cannot establish that any action or failure to act by Mr. Smith or his freelancers was the proximate cause of the fire. The Board of Managers contends that there are triable, material issues of fact that preclude summary judgment, such as the occurrences in the apartment between 3:30 p.m. and 5:00 p.m. immediately before the fire, when only Richard Smith and his freelancers were present. According to Mr. Goetz, Mr. Smith or his freelancers caused the fire, but no one was present to see them enter the kitchen and turn on the stove. The Board of Managers and Mr. Debbane assert that there is a question of fact as to whether the negligence of Mr. Smith or his freelancers caused the fire.

There are several triable, material issues of fact that preclude summary judgment in Richard Smith's favor. It is unclear who or what caused the fire in the apartment. According to Mr. Goetz, Mr. Smith or his freelancers caused the fire by either leaving the stove on or improperly discarding a cigarette, but no one was present to see them enter the kitchen and turn on the stove or smoke a cigarette in the apartment. There is no testimony that Richard Smith or his freelancers had entered the kitchen on the day of the fire. But Mr. Goetz's expert affidavit states that they were the last ones in the apartment within proximity in time to the activation of the fire sprinklers, and that Richard Smith is most likely responsible for the fire. Also, there is conflicting testimony about whether one of Richard Smith's freelancers had previously smoked

cigarettes in the apartment, as Ms. Debbane saw one of Mr. Smith's freelancers smoking in the apartment on more than one occasion, but not on the day of the fire (Carmen Debbane tr. at 57-59, 101). But Richard Smith and both of his freelancers attested that they did not smoke in the apartment at any time.

As there are triable, material issues of fact present, the court denies Richard Smith's motion for summary judgment.

*Motion Sequence 008: Didier Barrois' Motion for Summary Judgment*

Didier Barrois moves for summary judgment, dismissing the Sao Fernando action and all claims and cross claims against him. On the record at the oral argument for this motion, counsel for Didier Barrois stated that he has settled with Sao Fernando, and thus the portion of this motion seeking dismissal of claims by Sao Fernando is moot.

Sao Fernando withdrew its opposition to this motion on the record. The only other party that has opposed this motion is Richard Smith, who opposes dismissal of his cross-claims for contractual indemnification, contribution, and common-law indemnification against Didier Barrois. Richard Smith asserts that there are questions of fact as to whether Didier Barrois caused the fire, and until there has been a determination of Didier Barrois' liability, the cross-claims should stand.

Didier Barrois asserts that it is undisputed that there is no contract between Didier Barrois and Richard Smith, and thus the contractual indemnification cross-claim should be dismissed as a matter of law. As there is no evidence of a contract between Didier Barrois and Richard Smith, the court dismisses Richard Smith's cross-claim for contractual indemnification against Didier Barrois.

With respect to the contribution cross-claim, Didier Barrois asserts that General Obligations Law § 15-108 applies. As such, Richard Smith would be entitled to a setoff for whatever percentage of liability Didier Barrois is deemed to have been liable after trial, and the amount Didier Barrois paid to Sao Fernando in settlement would be a setoff to Sao Fernando's judgment. General Obligations Law § 15-108(b) states that a release given in good faith by the injured person to one tortfeasor relieves him from liability to any other person for contribution. Since Sao Fernando has released Didier Barrois from the Sao Fernando action, Richard Smith's contribution cross-claim against Didier Barrois is dismissed, pursuant to General Obligations Law § 15-108(b).

With respect to the common-law indemnification cross-claim, Didier Barrois asserts that in a negligence action, the party seeking common-law indemnity would have to bear no liability for the injuries, and the negligence would need to be completely vicarious. If Richard Smith is found even partially liable, then contribution would apply, which General Obligations Law § 15-108 addresses. If Richard Smith is not found liable, then he would be dismissed from the actions, and common-law indemnity would not apply. Common-law indemnity claims cannot be maintained where direct claims against the party seeking indemnity are not premised solely on a vicarious liability theory but rather assert that such party seeking indemnity was actually at fault. *Trustees of Columbia Univ. v. Mitchell/Ciurgola Assoc.*, 109 A.D.2d 449, 453 (1st Dep't 1985); *Esteve v. Nash*, 55 A.D.3d 474, 475 (1st Dep't 2008). Here, Sao Fernando makes claims against Richard Smith for his active negligence, and thus, the court dismisses Richard Smith's common-law indemnification claim against Didier Barrois.

*Motion Sequence 009: BBR1's Motion for Summary Judgment*

BBR1 moves for summary judgment and dismissal of both the Sao Fernando action and the Board of Managers action against it, as well as dismissal of all cross-claims asserted against it. On the record at the oral argument for the present motions, counsel for BBR1 stated that it has settled with Sao Fernando and the Board of Managers, and they have stipulated to discontinue the actions against BBR1 with prejudice, and thus the portion of this motion seeking dismissal of claims by Sao Fernando and the Board of Managers is moot.

Sao Fernando withdrew its opposition to this motion on the record. The only other party that has opposed this motion is Richard Smith, who opposes dismissal of his cross-claims for contribution and common-law indemnification against BBR1. Richard Smith asserts that BBR1's activities in the vicinity of the stove present questions of fact as to whether BBR1's negligence caused the fire. Richard Smith further contends that until there has been a determination of BBR1's liability, the cross-claims should stand. BBR1 asserts that if it left the stove on, the fire would have occurred much sooner, based upon the fact that BBR1 left the apartment earlier than everyone else on the day of the fire. Mr. Perez testified that BBR1 used a grinder in the kitchen a few days before the fire, at which point BBR1 put up plastic to protect the kitchen (Perez tr. at 23-24, 26). Once they were done using the grinder, they took all the plastic down and threw it out (*id.* at 27-28, 30). BBR1 did not use the grinder on the day of the fire (*id.* at 33, 69). Mr. Goetz's expert affidavit also ruled out BBR1's grinder as a potential source of ignition (Goetz Affidavit at ¶ 11).

With respect to the contribution cross-claim, the court finds that General Obligations Law § 15-108 applies, for the same reasons as stated above, and thus Richard Smith's contribution cross-claim against BBR1 is dismissed.

With respect to the common-law indemnification cross-claim, Sao Fernando and the Board of Managers make claims against Richard Smith for his active negligence, and thus, for the same reasons as stated above, the court dismisses Richard Smith's common-law indemnification claim against BBR1.

*Motion Sequence 10: Raymond Debbane's Motion for Summary Judgment*

Mr. Debbane moves for summary judgment and dismissal of Richard Smith's third-party claims in the Board of Managers action. Richard Smith makes third-party claims for contribution and common-law indemnification against Mr. Debbane.

Richard Smith asserts that Mr. Debbane cannot show that the fire was not caused by his negligence, and as the owner of the apartment, he owed a duty to the plaintiffs. He further asserts that Mr. Debbane owed a duty to the Board of Managers pursuant to the Alteration Agreement and there is a question of fact as to whether or not he exercised sufficient control of the apartment to make sure that it was in a safe condition.

Mr. Debbane asserts that he cannot be found negligent in causing the fire, as he never used the stove. Since there is a direct negligence claim against Richard Smith, Mr. Smith cannot assert a common law indemnity or contribution claim against him. Mr. Debbane also highlights the Fire Incident Report and Fire Marshal John Colabatistto's testimony that the fire was caused by combustibles, specifically paper, on the stove. There is no evidence that refutes this report and testimony. Mr. Debbane asserts that he left the apartment at 9:00 a.m. on the day of the fire and did not return until after the fire. He had not entered the kitchen, he did not turn on the stove, and he did not put paper on the stove. Ms. Debbane left the apartment on the day of the fire at 3:30 p.m., and so if she caused the fire, then Richard Smith or his freelancers would have noticed it before 5:00 p.m., when they left the apartment. Also, Ms. Debbane is not Mr.

Debbane's agent and is not a named party in the present actions. She did not supervise or direct any of the contractors in the apartment. Moreover, Mr. Debbane claims that he had no control over third parties working in his apartment, as they were contractors hired to perform tasks. He further contends that when he left the apartment, he left it in a reasonably safe condition, fulfilling his duty as the owner. He had no notice of a dangerous condition and did not create the dangerous condition. With respect to the Alteration Agreement, any obligations that Mr. Debbane may have had are irrelevant to the contribution claim.

To maintain the common-law indemnity and contribution claims, Richard Smith must establish that Mr. Debbane's negligence contributed to the fire. Mr. Debbane has demonstrated through his testimony, the Fire Marshall's report and testimony, and the Goetz expert affidavit, that he was not negligent and did not cause the fire. He had left the apartment at 9:00 a.m. on the day of the fire. He had no control over the contractors working in his apartment. When he left the apartment, he left it in a reasonably safe condition, fulfilling his duty as the owner. He had no notice of a dangerous condition and did not create the dangerous condition. Moreover, Richard Smith has failed to show that he is free from negligence, and thus, he cannot maintain a common-law negligence claim. As the Board of Managers maintain a claim of direct negligence against Richard Smith, common-law indemnification is not available. *See Trustees of Columbia Univ.*, 109 A.D.2d at 453; *see also Esteva*, 55 A.D.3d at 475. Contribution is not available where the liability upon which the contribution claim is based is derived solely from breach of contract. *Board of Educ. of Hudson City School Dist. v. Sargent, Webster, Crenshaw & Folley*, 71 N.Y.2d 21, 29 (1987).

As there are no questions of fact as to whether Mr. Debbane's negligence caused the fire, the court grants his motion for summary judgment and dismisses the third-party claims in the Board of Managers action as against him.

The court has considered the remainder of the arguments and finds them to be without merit.

### CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

**ORDERED**, that defendant Richard Smith d/b/a Richard Smith Studios' motion (mot. seq. 007) for an order, pursuant to CPLR § 3212, granting summary judgment in his favor and dismissal of the complaints in both actions as to Richard Smith is denied; and it is further

**ORDERED**, that the branch of defendant Noisettier, Inc. d/b/a Macassar Wood Work and Didier Barrois' motion (mot. seq. 008) for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the Sao Fernando action against them is moot; and it is further

**ORDERED**, that the branch of defendant Noisettier, Inc. d/b/a Macassar Wood Work and Didier Barrois' motion (mot. seq. 008) for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the cross-claims against them is granted; and it is further

**ORDERED**, that the branch of BBR1, Inc.'s motion (mot. seq. 009) for an order, pursuant to CPLR § 3212, granting summary judgment in its favor in both actions, dismissing all direct claims against it with prejudice is moot; and it is further

**ORDERED**, that the branch of BBR1, Inc.'s motion (mot. seq. 009) for an order, pursuant to CPLR § 3212, granting summary judgment in its favor, dismissing all cross-claims against it with prejudice is granted; and it is further

**ORDERED**, that Raymond Debbane's motion (mot. seq. 10) for an order, pursuant to CPLR § 3212, granting summary judgment in his favor, dismissing the third-party claims as against him in the Board of Managers action is granted; and it is further

**ORDERED**, that the remainder of the actions shall continue.

This constitutes the decision and order of the court.

April 4, 2019  
DATE

Kelly O'Neill Levy  
KELLY O'NEILL LEVY, J.S.C.

**KELLY O'NEILL LEVY**  
JSC

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE