

**Steward v Brooklyn Pier 1 Residential Owner, LP**

2020 NY Slip Op 32774(U)

August 19, 2020

Supreme Court, Kings County

Docket Number: 501930/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19<sup>th</sup> day of August, 2020.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

-----X

LEVERN T. STEWARD,

*Plaintiff,*

- against -

Index No. 501930/2019

DECISION AND ORDER

Motion Sequence # 1

BROOKLYN PIER 1 RESIDENTIAL OWNER, LP,  
BROOKLYN PIER 1 HOTEL OWNER, LP, HUDSON  
MERIDIAN CONSTRUCTION GROUP, LLC,  
CONSTRUCTION REALTY SAFETY GROUP,  
CONSTRUCTION AND REALTY SERVICES GROUP.  
TOLL BROTHERS, INC. and STARWOOD CAPITAL,  
LLC

*Defendants,*

-----X

BROOKLYN PIER 1 RESIDENTIAL OWNER, LP,  
BROOKLYN PIER 1 HOTEL OWNER, LP, HUDSON  
MERIDIAN CONSTRUCTION GROUP, LLC, TOLL  
BROTHERS, INC. and STARWOOD CAPITAL, LLC

*Third-Party Plaintiffs,*

- against -

GYPSUM NEW YORK SALES CORP. d/b/a/  
POURED FLOORS OF NY & NJ

*Third-Party Defendants,*

-----X

BROOKLYN PIER 1 RESIDENTIAL OWNER, LP,  
BROOKLYN PIER 1 HOTEL OWNER, LP, HUDSON  
MERIDIAN CONSTRUCTION GROUP, LLC, TOLL  
BROTHERS, INC. and STARWOOD CAPITAL, LLC

*Second Third-Party Plaintiffs,*

- against -

ARTHUR BYRD,

*Second Third-Party Defendant,*

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered (NYSCEF)</u>
Notice of Motion and	
Affidavits (Affirmations) Annexed .....	<u>53/54</u>
Opposing Affidavits (Affirmations) .....	<u>64</u>
Reply Affidavits (Affirmations) .....	<u>71</u>

After a review of the papers and oral argument the Court finds as follows:

The instant matter is an action for personal injuries allegedly sustained by the Plaintiff, Levern T. Steward (hereinafter referred to as the "Plaintiff") as a result of a motor vehicle accident which occurred on or about August 24, 2016, at or near the corner of Furman and Fulton Streets, in Brooklyn, New York. It is alleged that the 2<sup>nd</sup> 3<sup>rd</sup> Party Defendant, Arthur Byrd, (hereinafter referred to as the "Byrd") was operating a motor vehicle and was proceeding around a flag person at the time of the accident. The flag person was purportedly directing a vehicle exiting the adjacent construction site. During Mr. Byrd's drive around the flag person, he allegedly struck the Plaintiff.

Mr. Byrd apparently reached a settlement of the case with the Plaintiff. The Plaintiff purportedly executed a release in favor of the Mr. Byrd thereafter, in furtherance of the settlement (hereinafter referred to as the "Release"). The Plaintiff commenced suit against the Defendants, Brooklyn Pier 1 Residential Owner, L.P., Brooklyn Pier 1 Hotel Owner, L.P., Hudson Meridian Construction Group, LLC, Constructions Realty Safety Group, Construction and Realty Services Group, Toll Brothers, Inc., and Starwood Capital, LLC for their alleged role in relation to the accident. The Defendants/Third-Party Plaintiffs, Brooklyn Pier 1 Residential Owner, L.P., Brooklyn Pier 1 Hotel Owner, L.P., Hudson Meridian Construction Group, LLC, Toll Brothers, Inc., and Starwood Capital, LLC (hereinafter referred to as the "2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs") commenced a third-party suit against Mr. Byrd, and 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs claim that they are entitled to indemnification and contribution from Mr. Byrd.

Mr. Byrd now moves (motion sequence #1) for an order, pursuant to CPLR 3211(a)(5) and (7), dismissing the 2<sup>nd</sup> 3<sup>rd</sup> Party Complaint. Mr. Byrd contends that he is entitled to this relief because (i) under the doctrine of payment and release, pursuant to §15-108(b) of the General Obligations Law (hereinafter referred to as “§15-108(b)”), he cannot be liable to the 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs, since he settled with the Plaintiff and the Plaintiff provided a release in his favor; and (ii) the Second Third Party Complaint failed to state a cause of action for indemnification in this case.

The 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs oppose the motion, arguing that §15-108(b) does not bar claims for common-law indemnification against a tortfeasor who has settled a dispute with a plaintiff. Mr. Byrd’s response is that indemnification is impossible since the 2<sup>nd</sup> 3<sup>rd</sup>-Party Plaintiffs have no relationship with Mr. Byrd. Furthermore, any claim for contribution is barred by the operation of §15-108(b).

§15-108(b) states that, “[a] release given in good faith by the injured person to one tortfeasor as provided in subdivision (a) relieves him from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules.”

**[A] party’s right to indemnification may arise from a contract or may be implied ‘based upon the law’s notion of what is fair and proper between the parties. Implied [or common-law] indemnity is a restitution concept which permits shifting the loss because to fail to do so would result in the unjust enrichment of one party at the expense of the other... A party cannot obtain common-law indemnification unless it has been held to be vicariously liable without proof of any negligence or actual supervision on its own part.**

*McCarthy v. Turner Const., Inc.*, 17 N.Y.3d 369, 953 N.E.2d 794 [2011].

**With respect to contribution, “[t]he critical requirement for apportionment 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” (Nassau Roofing & Sheet Metal Co. v. Facilities Dev. Corp., 71 N.Y.2d 599, 603, 528 N.Y.S.2d 516, 523 N.E.2d 803). “To sustain a third-party cause of action for contribution, a third-party plaintiff is required to show that the third-party defendant owed it a duty of reasonable care independent of its contractual obligations [, if any], or that a duty was owed to the plaintiffs as injured parties and that a breach of that duty contributed to his alleged injuries” (Guerra v. St. Catherine of Sienna, 79 A.D.3d 808, 809,**

913 N.Y.S.2d 709; see *Marquez v. L & M De. Partners, Inc.*, 141 A.D.3d 694, 699-700, 35 N.Y.S.3d 700; *Guadalupi v. Morelli*, 127 A.D.3d 1016, 1017, 7 N.Y.S.3d 477, *Baratta v. Home Depot USA*, 303 A.D.2d 434, 756 N.Y.S.2d 605).

*Santoro v. Poughkeepsie Crossings, LLC*, 180 A.D.3d 12, 17, 115 N.Y.S.3d 368, 373 [2d Dept 2019].

The Court finds that the 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs cannot maintain their cause of action against Mr. Byrd due to the operation of the payment and release doctrine, as well as §15-108(b). The Plaintiff's release, in Mr. Byrd's favor, shields him from the 2<sup>nd</sup> 3<sup>rd</sup>-Party Plaintiff's contribution claims. Furthermore, since the movants have failed to articulate any relationship with the 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiffs, that would result in Mr. Byrd (proposed indemnitor) having a duty to 2<sup>nd</sup> 3<sup>rd</sup> party Plaintiffs (proposed indemintees), there can be no claim for indemnity. See *Mas v. Two Bridges Assocs. by Nat. Kinney Corp.*, 75 N.Y.2d 680, 554 N.E.2d 1257 [1990]; see also *Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 524 N.E.2d 413 [1988]. Therefore, Mr. Byrd's motion (motion sequence #1) is granted and the 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiff's Complaint against the Movant is dismissed.

Based upon the foregoing, it is hereby Ordered that:

Mr. Byrd's motion (motion sequence #1) is granted and the 2<sup>nd</sup> 3<sup>rd</sup> Party Plaintiff's Complaint against the Mr. Byrd is dismissed.

This constitutes the Decision and Order of the Court.

ENTER:

  
Carl J. Landicino  
J.S.C.

KINGS COUNTY CLERK  
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