At Part IA 27 of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Courthouse thereof, 851 Grand Concourse, Bronx, New York on the 31st day of August, 2021.

P R E S E N T:
HON. DAWN JIMENEZ-SALTA,
Justice.

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LINKOA JAMES,

Plaintiff,

– against –

GOLDEN FLOW DAIRY FARMS INC., UPSTATE DAIRY FARMS CORP. d/b/a UPSTATE DAIRY FARMS INC., GENERAL FORK LIFT CO., INC., and CROWN EQUIPMENT CORPORATION,

Defendants.

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GENERAL FORK LIFT CO., INC.,

Third-Party Plaintiff,

– against –

HYSTER-YALE GROUP, INC. d/b/a YALE FORKLIFTS,

Third-Party Defendant.

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DECISION/ORDER

Index No. 23244/2018E

Mot. Seq. 4

The following e-filed papers read herein:	NYSCEF Doc. Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	70-89
Opposing Affidavits (Affirmations)	90
Reply Affidavits (Affirmations)	91-92

Third-party defendant Hyster-Yale Group, Inc. d/b/a Yale Forklifts (Hyster-Yale) moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the third-party complaint and any cross claims asserted against it. For the reasons set forth herein, Hyster-Yale's motion is granted.

Plaintiff commenced this action by filing of a summons and complaint on March 20, 2018 alleging that he sustained personal injuries while working as a truck loader at the premises located at 54 Walworth Street in Brooklyn, New York on August 2, 2017. Plaintiff alleges that he was injured while operating a motorized pallet truck provided to his employer by defendant Upstate Dairy Farms Corp. (Upstate). The pallet truck was rented by Upstate from defendant General Fork Lift Co., Inc. (General). Plaintiff asserts that he "was reversing the jack from under a pallet" and when he "took his hand off the handle, the jack did not stop but kept going in reverse, causing [his] leg to be crushed."

General commenced a third-party action against Hyster-Yale, the manufacturer of the pallet truck, on November 14, 2018 alleging causes of action sounding in negligent design and manufacture, breach of warranty, strict products liability, common-law indemnification, contribution, contractual indemnification and breach of contract for failure to procure insurance.

The following recitation of the procedural history of the matter is taken from the parties' submissions. Following the commencement of the third-party action, Hyster-Yale served an answer on November 27, 2018 along with interrogatories and a notice to produce for inspection the subject pallet truck. A compliance conference was held on October 16, 2019 and the resultant order directed that General respond to Hyster-Yale's discovery demands within 30 days. It was subsequently determined that Upstate rented two pallet trucks of different models from General for use at the premises, but the parties were unable to determine which of the two pallet trucks plaintiff was operating at the time of the accident. By email communication, counsel for General advised that General was only able to locate and make available for inspection one of the two aforementioned pallet trucks. An inspection of said pallet truck was held on April 9, 2021. Hyster-Yale moved for summary judgment dismissing the third-party complaint on July 21, 2021.

In its motion, Hyster-Yale argues that the pallet trucks were designed and manufactured in compliance with the applicable industry standards and were safe for their intended use, that the claims sounding in breach of warranty are time-barred, and that the causes of action sounding in breach of contract must fail because there was no contract between Hyster-Yale and General. Hyster-Yale also argues that dismissal of the third-party complaint is warranted based on General's failure to preserve the pallet trucks. Hyster-Yale claims that the pallet truck produced for inspection was stripped of key component parts, rendering it incapable of operation or functional inspection. In support of the motion, Hyster-Yale annexes a copy of the pleadings, the affidavit of its engineer who attended the inspection, maintenance and inspection records for both pallet trucks from 2013 through 2017, and General's response to Hyster-Yale's notice to admit. A statement of material facts incorporating the aforementioned factual background and procedural history is also annexed to the motion papers (*see* 22 NYCRR 202.8-g).

In opposition, citing CPLR 3212(f), General argues that the motion should be denied as premature since discovery and party depositions have not yet been completed.

In reply, Hyster-Yale contends that all of the facts in its statement of material facts should be deemed admitted because General failed to provide a counterstatement of facts as required by 22 NYCRR 202.8-g(b) (*see* 22 NYCRR 202.8-g [c] ["Each numbered paragraph in the statement of material facts... will be deemed to be admitted unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party"]). Hyster-Yale asserts that General failed to demonstrate that further discovery would develop the factual record or remedy the alleged spoliation.

On a motion for summary judgment pursuant to CPLR 3212, the movant must make a prima facie showing of entitlement to judgment as a matter of law by submission of admissible evidence demonstrating that there are no material issues of fact requiring trial (*see Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant's initial burden is met, the burden shifts to the nonmoving party to produce evidentiary proof sufficient to establish the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d at 324).

Here, Hyster-Yale established its prima facie entitlement to summary judgment dismissing the strict products liability cause of action predicated on design and manufacturing defect theories (*see Carmona v Mathisson*, 54 AD3d 633, 634 [1st Dept 2008]). Hyster-Yale submitted, inter alia, the affidavit of an industrial engineer with expertise in the manufacture and design of the two models of Yale motorized pallet trucks at issue and other material handling equipment. Based on, inter alia, his review of the pertinent maintenance and historical records, Hyster-Yale's engineer opined that the pallet trucks were not defectively designed or manufactured, and that said pallet trucks were reasonably safe for their intended use and in compliance with the pertinent industry standards and regulations.

The Court likewise concludes that Hyster-Yale is entitled to summary judgment dismissing General's cause of action alleging negligent design and manufacture (*see Carmona v Mathisson*, 54 AD3d at 634; *see also Donovan v All-Weld Prods. Corp.*, 38 AD3d 227, 228 [1st Dept 2007], citing *Denny v Ford Motor Co.*, 87 NY2d 248, 257-258 [1995] [noting that little difference exists between defendant's prima facie case for negligence and strict liability products liability causes of action]).

The same submissions and facts establish Hyster-Yale's entitlement to dismissal of the remaining causes of action alleging breach of warranty, contribution, common-law indemnification, contractual indemnification and breach of contract for failure to procure insurance. With respect to the claims of breach of warranty, contractual indemnification and breach of contract, it is undisputed that there is no contract between Hyster-Yale and General, as General acquired the subject pallet trucks in the secondary market, and General alleged no other basis for which Hyster-Yale may be subject to liability under the aforesaid theories. General's cause of action alleging breach of warranty must also be dismissed on the basis that said cause of action is barred by the applicable four-year statute of limitations accruing from the date when the pallet trucks were first sold in 2000 and 2008 (*see Lexington Ins. Co. v Power Cooling Inc.*, 52 AD3d 412, 412 [1st Dept 2008]).

In opposition, General failed to raise a triable issue of fact by submission of any affidavit or other evidence rebutting Hyster-Yale's prima facie showing (*see Garnett v Strike Holdings LLC*, 131 AD3d 817, 821 [1st Dept 2015]). General also failed to serve a counterstatement denying any of the facts set forth in Hyster-Yale's statement of material facts as required by 22 NYCRR 202.8-g(b).

General's argument that the motion should be denied as premature pursuant to CPLR 3212(f) is unavailing as a "claimed need for discovery unsupported by facts suggesting it might lead to relevant evidence... is insufficient to forestall summary judgment" (*2386 Creston Ave. Realty, LLC v M-P-M Mgt. Corp.*, 58 AD3d 158, 162 [1st Dept 2009]; *see also Erkan v McDonald*, 146 AD3d 466, 468 [1st Dept 2017]).

In light of the foregoing, the Court does not reach Hyster-Yale's remaining arguments in support of the motion.

Accordingly, it is

ORDERED that third-party defendant Hyster-Yale Group, Inc. d/b/a Yale Forklifts' motion for summary judgment dismissing the third-party complaint is granted and the third-party complaint is dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

E N T E R,

Dawn Jimenez-Salta, J.S.C.
Hon. Dawn Jimenez-Salta
Justice of the Supreme Court

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY	☒ CASE STILL ACTIVE
2. MOTION IS.....	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER