

Heredia v GCB Inc.

2022 NY Slip Op 34524(U)

October 3, 2022

Supreme Court, Kings County

Docket Number: Index No. 520359/2017

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, Brooklyn, NY 11201, on the ___ day of _____ 2022.

OCT 03 2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION
and
ORDER**

-----X
ANTHONY HEREDIA,

Plaintiff,

-against-

Index No.: 520359/2017
Motion Date: 9/7/2022
Motion Cal. No.: 22-25
Mot. Seq. 6, 7, 8, and 9

GCB INC., JBR CARPENTERS & DRYWALL INC.
and SURA BINE LLC., G BUILDERS NY LLC., G
BUILDERS MANAGEMENT INC., G BUILDERS USA
INC., and GREENFIELD CUSTOM BUILDERS INC.,

Defendants.

-----X
GCB INC.,

Third-Party Plaintiff,

-against

METRO HIGH TECH STEEL & BUILDERS, INC.,
and H&S STEEL BUILDER CORP.,

Third-Party Defendants.

-----X

After oral argument, the following papers were read on the respective motions pursuant to CPLR 2219(a):

[Handwritten Signature]
2022 OCT -6 AM 9:33
KINGS COUNTY CLERK
FILED

<u>Papers</u>	<u>NYSCEF DOC. #</u>
Plaintiff's motion dated January 6, 2020 (MS#6) (1) Pursuant to CPLR 3212 granting Plaintiff partial summary judgment on the issue of liability against Defendants Sura Bine LLC and GCB INC. for violations of Labor Law § 240(1) and § 240 (6); (2) Pursuant to CPLR § 3126 striking Defendants Sura Bine LLC and GCB INC.'s Answers for their willful failure to comply with Court Ordered discovery, including plaintiff's Post-EBT demands dated August 22, 2019 and September 25, 2019; (3) Pursuant to CPLR § 3126 precluding Defendants Sura Bine LLC and GCB INC. from offering any evidence that	

Heredia v GCB, Inc., et al., Index No. 520359/2017

<u>Papers</u>	<u>NYSCEF DOC. #</u>
Plaintiff should not have been working on the subject construction site on the date of the accident; (4) That the matter be set down for a trial on the issue of damages only; attorney affirmation of Michael Peters, Esq., affirmed on January 6, 2020; Exhibits A-S....	87-108
Defendant/Third-Party Plaintiff GCB Inc.'s attorney affirmation of Lisa M. Rolle, affirmed on November 3, 2022 in opposition to Plaintiff's motion (MS#6).....	171
Plaintiff's reply attorney affirmation of Michael Peters, Esq., affirmed on November 4, 2020, to Defendant GCB's Affirmation in Opposition (MS#6).....	173
Defendant Sura Bina, LLC's cross-motion (MS#7) dated March 18, 2020 pursuant to CPLR 3212, (A) granting Sura Bina LLC's cross-motion for summary judgment on liability against plaintiff; (B) granting Sura Bina's cross-motion for summary judgment on common-law and contractual indemnification claims against Defendant GCB, Inc.; attorney affirmation of Meyer Y. Silber, Esq., affirmed on March 18, 2020; Exhibit A; Affidavit of Alex Carasco, sworn to on January 26, 2020.....	110-113
Plaintiff's attorney affirmation of Michael Peters, Esq., affirmed on October 30, 2020 in opposition to Defendant's cross-motion (MS#7) and in further support of motion (MS#6); Exhibit A.....	144
Defendant/Third-Party Plaintiff GCB Inc.'s attorney affirmation of Lisa M. Rolle, affirmed on November 3, 2020 in opposition to Defendant Sura Bina LLC's motion for summary judgment (MS#7).....	172
Defendant/Third-Party Plaintiff GCB, Inc.'s motion dated June 10, 2020 (MS#8) pursuant to CPLR 3212, granting Defendant/Third-Party Plaintiff GCB Inc. summary judgment dismissing all claims and cross claims in their entirety; attorney affirmation of Lisa M. Rolle, affirmed on June 10, 2020; Exhibit A-S.....	116-136
Plaintiff's affirmation in opposition to Defendant GCB's motion for summary judgment (MS#8).....	146
Defendant Sura Bina LLC's attorney affirmation of Meyer Y. Silber, affirmed on December 21, 2020 in further support of cross-motion (MS#8) and Reply for MS#7&8; Exhibits A-B; attorney affirmation of Meyer Y. Silber, affirmed on December 22, 2020 in opposition to MS#6; Exhibit A-D.....	175-183
Third-Party Defendant H&S Steel Builder Corp.'s motion dated November 2, 2020 (MS#9) (1) Pursuant to CPLR §§ 603 and 1010, severing the third-party action against H&S Steel Builder Corp. as discovery in the main action is complete and a Note of Issue was filed, or alternatively; (2) Extending H&S Steel Builder Corp.'s time to move for summary judgment until 120 days following the completion of all outstanding discovery in the third-party action; attorney affirmation of Sasha Grandison, affirmed on November 2, 2020; Exhibit A-H, I-1 through I-5, J, K, L1 through L3, M-P.....	147
Third-party Defendant H&S Steel Builder Corp.'s attorney affirmation of Sasha Grandison, affirmed on January 21, 2021, in reply (MS#9).....	186

MONTELIONE, RICHARD J., J.

This action was commenced by filing the summons and complaint on October 20, 2017.

The plaintiff claims violations of the Labor Law. Plaintiff is a welder who was injured on

October 2, 2017 while on a job site located at 311 Woodbine Street, Brooklyn, NY while using

Heredia v GCB, Inc., et al., Index No. 520359/2017

an allegedly defective ladder. The complaint was amended on April 3, 2018. Issue was joined on May 15, 2018 by GCB Inc. (“GCB”) filing an answer. Other defendants subsequently appeared and answered. A default judgment dated July 19, 2018 was granted against defendant JBR Carpenters & Drywall Inc. A default judgment dated March 1, 2019 was granted against defendants G Builders Management Inc. and Greenfield Custom Builders Inc.

Plaintiff Anthony Heredia (“Heredia” or “plaintiff”) was employed by third-party defendant Metro High Tech Steel & Builders Inc. (“Metro”). Defendant Sura Bine LLC (“Sura”) is the owner as reflected in a deed for the property located at 311 Woodbine Street, Brooklyn, NY where the accident occurred. Through written contract with the owner dated September 11, 2017, defendant GCB is the general contractor. By contract dated June 22, 2017, GCB hired Metro and H&S Steel Builder Corp. (“H&S”) to perform construction work involving installation of steel beams on the premises.

GCB asserts that claims under the Labor Law do not apply because Metro and H&S were not authorized to work on the date of the accident. Mendy Gluck (“Gluck”), GCB’s project manager, specifically instructed Alex Carasco (“Carasco”), the principal of Metro, to suspend work for three weeks because of a trip he was taking abroad. Carasco states that he was given this direction (NYSCEF#113), but that he forgot about a steel beam delivery and therefore instructed his employees to report to work even though he knew that he was not supposed to do so. There is no evidence that plaintiff ever learned of GCB’s direction that Metro was not to do any work until Gluck’s return.

GCB is listed as the insurance policy holder, and Sura, as an additional insured, under a certificate of insurance effective August 3, 2017 through August 3, 2018, which does not cover the date of the accident, issued by Lloyds of London as primary insurer. (NYSCEF#177).

Heredia v GCB, Inc., et al., Index No. 520359/2017

Labor Law § 200(1). General duty to protect health and safety of employees; enforcement

1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.

Labor Law § 240(1):

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

Labor Law § 240(6):

All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

Liabilities under the Labor Law are described in *Garcia v Emerick Gross Real Estate,*

L.P., 196 AD3d 676, 152 NYS3d 462, 465, 2021 NY Slip Op 04540, 2021 WL 3177756 (AD 2d

Dept 2021):

“Labor Law § 240(1) imposes upon owners, contractors, and their agents a nondelegable duty to provide workers proper protection from elevation-related hazards” (*Zoto v. 259 W. 10th, LLC*, 189

Heredia v GCB, Inc., et al., Index No. 520359/2017

A.D.3d 1523, 1524, 134 N.Y.S.3d 728; *see* Labor Law § 240[1]). To establish liability pursuant to Labor Law § 240(1), a plaintiff must demonstrate a violation of the statute and that such violation was a proximate cause of his or her injuries (*see Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 N.Y.3d 280, 287–289, 771 N.Y.S.2d 484, 803 N.E.2d 757). “Although comparative fault is not a defense to the strict liability of the statute, where the plaintiff is the sole proximate cause of his or her own injuries, there can be no liability under Labor Law § 240(1)” (*Lojano v. Soiefer Bros. Realty Corp.*, 187 A.D.3d 1160, 1162, 134 N.Y.S.3d 363; *see Cahill v. Triborough Bridge & Tunnel Auth.*, 4 N.Y.3d 35, 39, 790 N.Y.S.2d 74, 823 N.E.2d 439).

The elements for common-law and contractual indemnification are found in *Crutch v 421 Kent Dev., LLC*, 192 AD3d 977, 981, 146 NYS3d 155, 159, 2021 NY Slip Op 01751, 2021 WL 1112925 (AD 2d Dept 2021):

‘In order to establish a claim for common-law indemnification, a party must prove not only that it was not negligent, but also that the proposed indemnitor's actual negligence contributed to the accident, or, in the absence of any negligence, that the indemnitor had the authority to direct, supervise, and control the work giving rise to the injury’ (*Mohan v. Atlantic Ct., LLC*, 134 A.D.3d 1075, 1078–1079, 24 N.Y.S.3d 102). Thus, a party moving for summary judgment dismissing a common-law indemnification claim can meet its prima facie burden by establishing that the plaintiff's accident was not due to its own negligence (*see Mikelatos v. Theofilaktidis*, 105 A.D.3d 822, 824, 962 N.Y.S.2d 693).

See Crutch v 421 Kent Dev., LLC, 192 AD3d 977, 981, 146 NYS3d 155, 160, 2021 NY Slip Op 01751, 2021 WL 1112925 (AD 2d Dept 2021):

‘The right to contractual indemnification depends upon the specific language of the contract’ (*O'Donnell v. A.R. Fuels, Inc.*, 155 A.D.3d 644, 645, 63 N.Y.S.3d 504, quoting *George v. Marshalls of MA, Inc.*, 61 A.D.3d 925, 930, 878 N.Y.S.2d 143; *see Bellefleur v. Newark Beth Israel Med. Ctr.*, 66 A.D.3d 807, 808, 888 N.Y.S.2d 81). “The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances” (*George v. Marshalls of MA, Inc.*, 61 A.D.3d at 930, 878 N.Y.S.2d 143; *see Shea v. Bloomberg, L.P.*, 124 A.D.3d 621, 622, 2 N.Y.S.3d 512). “In addition, ‘a party seeking contractual indemnification must

Heredia v GCB, Inc., et al., Index No. 520359/2017

prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor' (*Reisman v. Bay Shore Union Free School Dist.*, 74 A.D.3d 772, 773, 902 N.Y.S.2d 167, quoting *Cava Constr. Co., Inc. v. Gealtec Remodeling Corp.*, 58 A.D.3d 660, 662, 871 N.Y.S.2d 654).

There is a non-delegable duty for owners and contractors to adhere to Labor Law regulations. *See Morton v State*, 15 NY3d 50, 55, 930 NE2d 271, 274, 904 NYS2d 350, 353, 30 IER Cases 1528, 2010 NY Slip Op 04827, 2010 WL 2265026 (Ct. of Ap. 2010):

Labor Law § 241(6) imposes a nondelegable duty (footnote omitted) on owners and contractors to comply with the Commissioner of Labor's regulations (*see Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 502, 601 N.Y.S.2d 49, 618 N.E.2d 82 [1993]). And 'to the extent that [a] plaintiff ... assert[s] a viable claim under Labor Law § 241(6), he need not show that defendants exercised supervision or control over his worksite in order to establish his right of recovery' (*id.*).

Plaintiff's Motion (MS#6)

Plaintiff moves for summary judgment on the issue of liability against defendants Sura and GCB for (1) violations of Labor Law § 240(l) and § 240(6); (2) Pursuant to CPLR § 3126 striking defendants Sura and GCB's Answers for their willful failure to comply with Court Ordered discovery, including plaintiff's Post-EBT demands dated August 22, 2019 and September 25,2019; (3) Pursuant to CPLR § 3126 precluding defendants Sura and GCB from offering any evidence that plaintiff should not have been working on the subject construction site on the date of the accident; and for other relief.

Plaintiff was injured when he went up 8 feet on an 11-foot straight ladder which had no rubber tips on the bottom, was not affixed to any structure and had no one to hold it. The ladder was an "extension" ladder which originally had two parts when fully opened would extend 22 feet. However, plaintiff's supervisor took the extension ladder apart and made two separate

Heredia v GCB, Inc., et al., Index No. 520359/2017

ladders. Of these ladders, one was provided to the plaintiff and its footing slipped causing the plaintiff to fall and injure himself. Plaintiff has met his prima facie burden of proof in showing a violation of Labor Law §§ 240(1) and 240(6) pursuant to New York State Industrial Code Sections 23-1.21(b)(3)(iv), “(3) Maintenance and replacement. All ladders shall be maintained in good condition. A ladder shall not be used if any of the following conditions exist: ... If it has any flaw or defect of material that may cause ladder failure;” 23-1.21(b)(4)(ii), “All ladder footings shall be firm. Slippery surfaces and insecure objects such as bricks and boxes shall not be used as ladder footings;” and 23-1.21(b)(4)(iv), “When work is being performed from ladder rungs between six and 10 feet above the ladder footing, a leaning ladder shall be held in place by a person stationed at the foot of such ladder unless the upper end of such ladder is secured against side slip by its position or by mechanical means...” The burden shifts to defendants. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 563 (Ct. of Ap. 1980).

Subsequent to oral argument, on the record, and after consideration of *Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 135 AD3d 790, 791, 24 NYS3d 147, 2016 NY Slip Op 00316, 1, 2016 WL 230477 (AD 2d Dept 2016), any unauthorized work is a complete defense to claims under Labor Law §§ 240(1) or 241(6). Metro and H&S were allegedly told to suspend work for three weeks. *Aslam*, like the current matter before the court, involves an allegation that the subcontractor was performing work without the permission of the owner and general contractor at the time the subcontractor’s employee is injured. (“...(P)laintiff contended that he had received permission from *his employer* to do work on the subject building on the day of his accident... the owner and general contractor contended that the plaintiff was expressly prohibited from performing work on the subject building until certain demolition work was completed.” *See Aslam v Neighborhood Partnership Hous. Dev. Fund Co.*,

Heredia v GCB, Inc., et al., Index No. 520359/2017

Inc., 135 AD3d 790, 790-91, 24 NYS3d 147, 2016 NY Slip Op 00316, 1, 2016 WL 230477 (AD 2d Dept 2016).

The plaintiff argues that he was told by his employer to work on the date of the accident and the defendant owner and general contractor assert that he was not authorized. These facts alone would generally result in the denial of summary judgment to either party as it raises a question of fact. *See Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, supra. But plaintiff's employer provided an affidavit that he was not authorized to have his employees work at the time of the accident which is a complete defense. *See Aslam v Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, supra. Has the burden now shifted and has plaintiff failed to raise an issue of fact which now mandates the court to grant summary judgment against him? The court notes that Carrasco, one of the principals of Metro, who acknowledges that he was told by Gluck (GCB) that his company may not do the work for three weeks, is the same person who took the ladder apart and allegedly told the plaintiff to use the defective ladder. The contract dated June 22, 2017 between the general contractor and Metro (NYSCEF#101), makes no mention of any provision that requires that the work be suspended when the general contractor is not available to supervise. There being no written contractual obligation on the part of Metro to delay construction until Gluck returned from abroad, or any documentary evidence such as emails, text messages, or other communications as to this agreement to suspend the work for three weeks, the only evidence is the alleged phone call between Gluck and Carrasco.¹ Carrasco's acknowledgment of being told by Gluck that he was not allowed on the work site is not adverse to his company's interest because Metro, being plaintiff's employer, is completely shielded

¹ The plaintiff served a demand upon defendants for, "Copies of any and all electronic communications, including emails, text messages, and other correspondence between Mendy Gluck and/or Alex Carrasco and/or Yakov Komitzer and/or Abe Herman evidencing that the subject construction site was allegedly "closed" prior to the subject accident." (NYSCEF#106). Gluck at his deposition specifically testified that such records do not exist.

Heredia v GCB, Inc., et al., Index No. 520359/2017

under the Workers Compensation Law from any liability to plaintiff (Workers Compensation Law §11 and *Fuller v KFG Land I, LLC*, 189 AD3d 666, 139 NYS3d 166, 2020 NY Slip Op 07998, 2020 WL 7701552 [AD 1st Dept 2020]). In fact, in the event the action is dismissed, any obligations of Metro for contractual indemnification would be limited and not include the personal injuries suffered by plaintiff. Plaintiff argues that Carrasco knew the combination for the combination lock on the job site and there were no signs or other measures to prevent Metro from working on the date of the accident. There being no documentary evidence as to a significant term of the agreement regarding site closure when GCB is unavailable to supervise Metro, and the complete defense being built upon one phone conversation known only to the general contractor and the subcontractor, the court finds that conflicting inferences may be drawn from the evidence and therefore finds there is an issue of fact to be determined by a jury. *See Walker v Ryder Truck Rental and Leasing*, 206 AD3d 1036, 1037-38, 168 NYS3d 861, 862, 2022 NY Slip Op 04188, 2022 WL 2335849 (AD 2d Dept 2022):

‘A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility’ (*Ruiz v. Griffin*, 71 A.D.3d 1112, 1115, 898 N.Y.S.2d 590 [internal quotation marks omitted]). ‘The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist’ (*Charlery v. Allied Tr. Corp.*, 163 A.D.3d 914, 915, 81 N.Y.S.3d 523 [internal quotation marks omitted]; *see Chimbo v. Bolivar*, 142 A.D.3d 944, 945, 37 N.Y.S.3d 339).

The missing provision in the contract between the owner and general contractor mandating supervision by the general contractor of Metro is sufficient to raise a triable issue of fact. *See also Lacoparra v Belliono*, 296 AD2d 480, 481 (AD 2d Dept 2002). Moreover, the conversation is within the exclusive knowledge of the general contractor and subcontractor and this court declines to grant summary judgment on liability on the basis of closure of the worksite.

Heredia v GCB, Inc., et al., Index No. 520359/2017

6B Carmody-Wait 2d § 39:119, “A motion for summary judgment will be denied where facts essential to justify opposition to the motion are solely within the knowledge of the moving party.¹ (footnote omitted) Thus, where a party is unable to effectively oppose a motion for summary judgment because the evidence needed is within the exclusive knowledge of the moving party, the court may deny the motion without prejudice or refrain from ruling on the motion pending further disclosure.² (footnote omitted)

In opposition to plaintiff’s motion to strike defendants Sura and GCB’s defenses for failure to provide discovery, defendants argue that on March 27, 2020, plaintiff filed a note of issue certifying that all discovery was complete except for an outstanding IME. (NYSCEF#114). Plaintiff’s motion for summary judgment and to strike was filed on January 6, 2020. There is/was no motion to extend the date for filing the note of issue. There is a final pre-note order dated October 7, 2019 directing “defendants to respond to plaintiff’s post EBT demands dated 9/25/19 & 8/22/19 by 11/14/19.” (NYSCEF#66). Defendant’s arguments are rejected. *See Nationstar Mtge., LLC v Jackson*, 192 AD3d 813, 816, 144 NYS3d 81, 84, 2021 NY Slip Op 01420, 2021 WL 900848 (AD 2d Dept 2021):

Contrary to the defendant's contention, the plaintiff did not waive its objection to the defendant's failure to meet its disclosure obligations by filing a note of issue and certificate of readiness, since the plaintiff's motion seeking discovery sanctions pursuant to CPLR 3126 was pending prior to the date the plaintiff filed the note of issue (*cf. J.H. v. City of New York*, 170 A.D.3d 816, 818, 93 N.Y.S.3d 896; *Iscowitz v. County of Suffolk*, 54 A.D.3d 725, 725, 864 N.Y.S.2d 78).

Here, plaintiff’s motion to preclude was filed on January 6, 2020. The Note of Issue was filed on March 18, 2020 and plaintiff preserved his rights to seek relief. *See Nationstar Mtge., LLC v Jackson*, supra. As to defendant Sura, the court rejects this defendant’s argument that only defendant GCB would have documents and information in response, if any. A response to a

Heredia v GCB, Inc., et al., Index No. 520359/2017

demand indicating that a party has no documents is a response required under the CPLR and ignoring the demand entitles plaintiff to relief under CPLR 3126.

Defendant Sura's cross-motion (MS#7)

Sura (owner) moves for summary judgment on liability against plaintiff and summary judgment on common-law and contractual indemnification claims against defendant GCB (general contractor). There is an AIA contract dated September 11, 2017 (DOA October 2, 2017) but the only section that appears to relate to indemnification is Article 10, insurance and bonds. (NYSCEF#100). This section reflects \$0.00 as the limit of liability or bond amount. Defendant Sura has not directed the court's attention to any contractual indemnification provision that was in effect at the time of the accident and the court has found none. There is a contract rider, dated October 25, 2017, which is after the date of the accident, that reflects the following: "To the fullest extent permitted by law, the contractor agrees to indemnify, defend and hold harmless the Owner,...from any and all claims, suites damages, liabilities professional fees, including attorneys' fees, costs, court costs, expenses and disbursements related to death, bodily injury or property damage..."

Defendant/Third-Party Plaintiff GCB's motion for summary judgment (MS#8)

Defendant/Third-Party Plaintiff GCB moves for summary judgment dismissing all claims and cross claims in their entirety. For reasons stated regarding MS#6, the motion for summary judgment against plaintiff on liability is denied. GCB's motion to dismiss cross claims for contractual indemnification is granted because there is no contract provision that provides for such indemnification. See *Crutch v 421 Kent Dev., LLC*, 192 AD3d 977, 981, 146 NYS3d 155, 160, 2021 NY Slip Op 01751, 2021 WL 1112925 (AD 2d Dept 2021). GCB's motion to dismiss cross claims for common law indemnification is granted because GCB was not present on the

Heredia v GCB, Inc., et al., Index No. 520359/2017

date of the accident and was not “actively at fault.” *McCarthy v Turner Const., Inc.*, 17 NY3d 369 (Ct. of Ap. 2011).

Third-Party Defendant H&S Steel Builder Corp.’s Motion to Sever and for Other Relief
(MS#9)

Third-Party Defendant H&S Steel Builder Corp.’s moves (1) Pursuant to CPLR §§ 603 and 1010, to sever the third-party action against H&S as discovery in the main action is complete and a Note of Issue was filed, or alternatively; (2) Extending H&S’s time to move for summary judgment until 120 days following the completion of all outstanding discovery in the third-party action. The third-party action involves claims by GCB for contractual indemnification, breach of contract for failure to procure insurance, common law indemnification, contribution and apportionment. The third-party summons and complaint was filed on May 1, 2019, approximately one year and seven month from the date the action was filed. The causes of action were certainly well known to the third-party plaintiff at the time the action was commenced. There is no explanation for the delay and if the third-party action is not severed it will delay the trial. The court finds that the defendant/third-party plaintiff GCB’s delay in commencing the third party action should not result in any further delays and the motion to sever is granted. *See Lopez v Halletts Astoria LLC*, 205 AD3d 573, 575-76, 169 NYS3d 282, 285-86, 2022 NY Slip Op 03346, 2022 WL 1632223 (AD 1st Dept 2022):

Supreme Court providently granted the motions to sever the third-party action, as plaintiff and S & E ‘would be prejudiced by defendant[s]’ inexcusable delay in bringing the third-party action’ (*WVH Hous. Dev. Fund Corp. v. Brooklyn Insulation & Soundproofing, Inc.*, 193 A.D.3d 523, 523–524, 141 N.Y.S.3d 841 [1st Dept. 2021]; *see also Torres v. Visto Realty Corp.*, 106 A.D.3d 645, 645, 965 N.Y.S.2d 721 [1st Dept. 2013]). S & E was not impleaded until many months after the note of issue was filed and almost two years after defendants were notified that S & E was plaintiff’s employer. S & E would also be prejudiced, since it has not had the opportunity to conduct discovery.

Heredia v GCB, Inc., et al., Index No. 520359/2017

The court finds no prejudice to any of the parties inasmuch as the third-party action is based upon causes of action for indemnification and contribution which need not be decided at a trial involving damages and liability. *See Singh v City of New York*, 294 AD2d 422, 423-24, 741 NYS2d 915, (Mem)-916, 2002 NY Slip Op 04048, 2001 WL 1867745 (AD 2d Dept 2002):

We find that severance of the third-party action is an appropriate remedy which avoids ‘prejudice [to] the substantial rights of any party’ (CPLR 1010; *see* CPLR 603). The plaintiff is ready to proceed to trial on the sole issue of damages while the third-party defendants have yet to begin discovery in connection with the claim for indemnification. Under these circumstances, the Supreme Court should have denied the motion for summary judgment dismissing the third-party complaint and granted the plaintiff’s motion for severance (*see Ambriano v. Bowman*, 245 A.D.2d 404, 666 N.Y.S.2d 471; *Santos v. Sure Iron Works*, 166 A.D.2d 571, 573, 560 N.Y.S.2d 857; *Cusano v. Sankyo Seiki Mfg. Co.*, 184 A.D.2d 489, 584 N.Y.S.2d 324).

See also Zawadzki v 903 E. 51st St., LLC, 80 AD3d 606, 608, 914 NYS2d 272, 274, 2011 NY Slip Op 00220, 2011 WL 104297 (AD 2d Dept 2011), “(t)he determination of whether to grant or deny a request for a severance pursuant to CPLR 603 is a matter of judicial discretion, which should not be disturbed on appeal absent a showing of prejudice to a substantial right of the party seeking the severance (*see Naylor v. Knoll Farms of Suffolk County, Inc.*, 31 A.D.3d 726, 727, 818 N.Y.S.2d 460; *Mothersil v. Town Sports Intl.*, 24 A.D.3d 424, 425, 804 N.Y.S.2d 687).”

Based on the foregoing, it is

ORDERED that plaintiff’s motion (MS#6) for summary judgment on the issue of liability against defendants Sura Bine LLC and GCB Inc. is DENIED as there are issues of fact; and it is further

ORDERED that plaintiff’s motion (MS#6) to preclude defendants Sura Bine LLC and GCB Inc. from offering any evidence as to the closure of the work site on the day of the accident is GRANTED to the extent that defendants must respond to plaintiff’s post-deposition demands, to the extent they have not already done so, within 20 days of entry of this order or the defendant

Heredia v GCB, Inc., et al., Index No. 520359/2017

who fails to respond shall be precluded from offering any evidence as to the closure of the work site on the day of the accident; and it is further

ORDERED that defendant Sura Bine LLC's motion (MS#7) for summary judgment on the issue of liability against plaintiff is DENIED as there are issues of fact; and it is further

ORDERED that defendant Sura Bine LLC's motion (MS#7) for summary judgment against defendant GCB, Inc. for contractual or common law indemnification is DENIED; and it is further

ORDERED that defendant/third-party plaintiff GCB, Inc.'s motion (MS#8) for summary judgment dismissing all claims and cross claims in their entirety is GRANTED only to the extent that the cross-claims of defendant Sura Bine LLC for common law or contractual indemnification are DISMISSED; and it is further

ORDERED that third-party defendant Steel Builder Corp.'s motion severing the third-party action (MS#9) against H&S Steel Builder Corp. is GRANTED; and it is further

ORDERED that any request for relief that is not specifically addressed is DENIED.

This constitutes the decision and order of the Court.



Hon. Richard J. Montelione

2022 OCT -6 AM 9:33
KINGS COUNTY CLERK
FILED