Board of Mgrs. of 141 Fifth Ave. Condominium v 141 Acquisition Assoc. LLC
2023 NY Slip Op 30119(U)
January 5, 2023
Supreme Court, New York County
Docket Number: Index No. 651426/2013
Judge: Andrew Borrok
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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

----------X

BOARD OF MANAGERS OF 141 FIFTH AVENUE CONDOMINIUM,

Plaintiff,

- v -

141 ACQUISITION ASSOCIATES LLC,141 FIFTH AVENUE PARTNERS LLC,141 FIFTH AVENUE MANAGER LLC,SAVANNA 141 PRINCIPALS LLC,CIF 141 FIFTH LLC,J CONSTRUCTION COMPANY LLC,CHRISTOPHER SCHLANK, NICHOLAS BIENSTOCK, CETRA/RUDDY INCORPORATED, ALFRED KARMAN, FRANK SETA & ASSOCIATES LLC,

Defendant.

INDEX NO.	651426/2013
MOTION DATE	N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A, N/A
MOTION SEQ. NO.	026 027 028 029 030 031 032 033 034 035 036 037 040

DECISION + ORDER ON MOTION

----------X

J CONSTRUCTION COMPANY LLC

Plaintiff,

-against-

FRANK A. SETA& ASSOCIATES, LLC, CETRA-RUDDY INCORPORATED, JOHN A. CETRA ARCHITECTURE, LLC

Defendant.

Third-Party
Index No. 595360/2016

----------X

J CONSTRUCTION COMPANY LLC

Plaintiff,

-against-

IMPERIAL PAINTING & FIREPROOFING, CITIQUIET, INC., ACCURATE ELECTRICAL CONTRACTORS CORP., D&D ELEVATOR MAINTENANCE, INC., GARDEN STATE COMMERCIAL SERVICES, LLC, JM3 CONSTRUCTION, LLC, HUGHES CONTRACTING INDUSTRIES, LTD., M&D FIREDOOR, RCI PLUMBING CORP., PRITECH CONTRACTING CORP., WOODBURY CONSTRUCTION ENTERPRISES INC., PERIMETER BRIDGE & SCAFFOLD CO INC., NEW YORK CUSTOM WOODWORKS, METRO MECHANICAL, LIFT TECH ELEVATOR SERVICE, LLC, SIM SOON CONSTRUCTION, INC.

Second Third-Party
Index No. 595394/2016

Defendant.
----------X

PRITECH CONTRACTING CORP. Third Third-Party
Index No. 595225/2017

Plaintiff,

-against-

FRANK A. SETA & ASSOCIATES LLC

Defendant.
----------X

GARDEN STATE COMMERCIAL SERVICES, LLC Fourth Third-Party
Index No. 595322/2017

Plaintiff,

-against-

NEW ROYAL RESTORATION CORP.

Defendant.
----------X

141 ACQUISITION ASSOCIATES LLC Fifth Third-Party
Index No. 595414/2017

Plaintiff,

-against-

FRANK SETA & ASSOCIATES LLC

Defendant.
----------X

J CONSTRUCTION COMPANY LLC Sixth Third-Party
Index No. 595639/2017

Plaintiff,

-against-

ROYAL-PAK SYSTEMS INC., GOTHAM WATERPROOFING AND RESTORATION, LLC, KNS BUILDING RESTORATION INC., CCR SHEET METAL, INC., CROWNE ARCHITECTURAL SYSTEMS, INC., GACE CONSULTING ENGINEERS, D.P.C. F/K/A GOLDSTEIN ASSOCIATES, PLLC, MG ENGINEERING D.P.C. D/B/A MGJ ASSOCIATES INC., QUALITY CONSULTANTS, LLC, PROJECT CONTROL GROUP, INC.

Defendant.
----------X

GOTHAM WATERPROOFING AND RESTORATION, LLC Seventh Third-Party

Index No. 595676/2018

Plaintiff,

-against-

CLARK & WILKINS INDUSTRIES, INC.

Defendant.

----------X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 026) 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1656, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 1540, 1541, 1542, 1543, 1544, 1657, 1665, 1693, 1694, 1695, 1696, 1697, 1711, 1712, 1713

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1659, 1663, 1670, 1671, 1672, 1706, 1707, 1723, 1724, 1725, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 029) 1557, 1558, 1559, 1560, 1561, 1562, 1660, 1698, 1699, 1700, 1701, 1702, 1703, 1708, 1709, 1710

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 030) 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1654, 1661, 1705

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 031) 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1655, 1673

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1653, 1658, 1704, 1726, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1827

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 033) 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1667, 1668, 1674
were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 034) 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1666, 1669, 1675
were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 035) 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1664, 1676
were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 036) 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1662, 1677, 1799
were read on this motion to/for SEVER.

The following e-filed documents, listed by NYSCEF document number (Motion 037) 1649, 1650, 1651, 1652, 1678, 1679, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798
were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 040) 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952
were read on this motion to/for DISMISS.

The motions in limine are decided as set forth below.

Reference is made herein to (i) a Decision and Order of this Court dated April 19, 2021 (the **Summary Judgment Decision**; NYSCEF Doc. No. 1476) and (ii) a Decision and Order of this Court dated October 27, 2022 (the **Reargument Decision**; NYSCEF Doc. No. 1911).

New Royal's motion to dismiss Garden State's contractual indemnification claims against New Royal must be denied (Mtn. Seq. No. 026)

New Royal Restoration Group (**New Royal**) moves to dismiss Garden State Commercial Services, LLC's (**Garden State**) claims for contractual indemnification, arguing that Garden State controlled, directed, and supervised New Royal, and therefore any claims arising out of New Royal's work necessarily arose out of Garden State's work. As an initial matter, the motion is not a motion in limine. It is either an attempt at a motion to reargue or an untimely summary judgment motion. To the extent that this is a motion to reargue, the papers offer nothing that this court overlooked or did not understand, as discussed in the Reargument Decision. Pursuant to CPLR 2221(d), a motion for leave to reargue must be based on matters of law or fact allegedly overlooked or misapprehended by the Court in determining the prior motion but shall not include matters of fact not offered on the prior motion (*Jones v City of New York*, 146 AD3d 690, 690-691 [1st Dept 2017]). Thus, the motion in limine must be denied as a disguised motion to reargue. As a motion for summary judgment, the motion fairs no better. Initially, the Court notes that New Royal submits its own Rule-19A Statement that does not comply with the Part Rules and shall not be considered:

> 2. Summary judgment motions must be filed no later than 60 days from the filing of the note of issue. Rule 19-A statements will not be accepted on summary judgment motions unless it is a Joint Statement of Undisputed Facts. If there are no facts to which the parties agree, the parties should not submit a Rule 19-A statement.

Even if it were considered, the outcome would be no different. It is disputed whether Garden State controlled the means and methods of New Royals' work. To wit, Mr. Glynn attests that he observed Mr. Mahmood solely directing the manner and methods in which his workers performed work on the cupola and the facade:

> 8. I personally visited the site at least every 4-6 weeks and based on my personal observations it was clear that Mr. Gutierrez never did any physical work, and

> while there were many times he was on the scaffold with the New Royal workers, the actual detailed instructions and control of the work was handled by Mr. Mahmood as the president of New Royal and supervisor of his own men. Mr. Mahmood was solely responsible for the control of the actual work, including the means, methods, and manner. Based upon my observations, Mr. Mahmood was constantly speaking with his workers, instructing them, and guiding them on their work on the building. Often times, when I came to the jobsite, Mr. Gutierrez was not on the scaffold but was in the office provided by J Con, at which time Mr. Mahmood and his workers continued to work on the dome and facade independently, with Mr. Mahmood providing direction and control of his workers as he had always done. All of the above is based upon my personal observations at the jobsite.
>
> 9. During the course of my visits, I observed Mr. Mahmood and his workers working on the facade and while I did not see them do prep work to the cupola dome, I did see them do repair work and apply a liquid membrane to waterproof the dome. Each time I visited, my observations were that Mr. Mahmood worked independently with his men and he provided all of the direction and control on how to do the work. At times, I went up on the scaffolding to observe work to make sure that things were going smoothly

(NYSCEF Doc. No. 1721).

In other words, New Royal leans in too heavily on Mr. Gutierrez's testimony that he "supervised" the work. It simply can not be said that enforcing the indemnification provision would amount to having New Royal indemnify Garden State for Garden State's negligence. Nothing has changed since when the Court issued the Summary Judgment Decision. Nothing in the indemnification provision necessarily impermissibly requires Garden State to indemnify New Royal for Garden State's own negligence and, in any event, negligence in this case has not yet been established (NYSCEF Doc. No. 1476, at 32). Thus, the motion must be denied.

New Royal's motion to admit must be denied (Mtn. Seq. No. 027)

New Royal moves to admit Garden State's Response to New Royal's Statement of Material Facts in Dispute (the **Garden State Response**; NYSCEF Doc. No. 1544) that was submitted as

part of Garden State's opposition to New Royal's motion for summary judgment. The motion must be denied. New Royal submitted a Rule 19-A statement that does not comply with the Part rules. The part rules specifically provide that

> 2. Summary judgment motions must be filed no later than 60 days from the filing of the note of issue. Rule 19-A statements will not be accepted on summary judgment motions unless it is a Joint Statement of Undisputed Facts. If there are no facts to which the parties agree, the parties should not submit a Rule 19-A statement.

The argument that because they filed a Rule-19A statement, other parties were required to respond is simply wrong and ignores the Part rules. To the extent that any parties did respond, any such response can be used for impeachment purposes. Lastly, it is false that Garden State did not dispute any material facts. Although it is true that between J-Bar and Garden State, Garden State would be responsible for the means and methods of construction, this does not mean as between Garden State and New Royal, Garden State is responsible for the means and methods of construction. Thus, the motion must be denied.

The Board's motion to preclude must be granted (Mtn. Seq. No. 028)

Board of Managers of 141 Fifth Avenue Condominium's (the **Board**) motion to preclude the defendants from (i) relitigating the validity of the assignment contained in the Confidential Settlement Agreement (the **CSA**) and (ii) attempting to offer argument, evidence, or testimony that the Board's settlement with 141 Acquisition Associates, LLC (the **Sponsor**) fully compensated the Board for its damages in this action and precludes the Board from recovering damages from the remaining defendants at trial must be granted. It is the law of the case that (i) the Sponsor has assigned its claims and defenses to the Board and that the defendants are not entitled to a jury instruction that the Board bears any burden to prove the assignment of

Sponsor's claims and defenses to them and (ii) the defendants are not entitled to argue or offer evidence or testimony concerning whether the CSA with the Sponsor fully compensated the Board for its damages (NYSCEF Doc. No. 1476, at 13-14, 19-21). The CSA was not intended to be a cap on the liability of the non-settling defendants and, as the Court has already found, there is no basis to limit damages available to the Board by the settlement payment because the settlement contemplated the assignment of the Sponsor's claims as part of the consideration (*id.*, at 30). Thus, the motion must therefore be granted. For the avoidance of doubt, the Board is not moving to preclude evidence as to the assignment of the CMA.

New Royal's motion to preclude certain testimony from John Glynn is granted solely to the extent that he may not testify about hearsay (Mtn. Seq. No. 029)

New Royal moves to prevent John Glynn, a principal of Garden State, from testifying about work performed and/or conversations about work performed unless he has firsthand knowledge of the same. The motion is granted solely to the extent that Mr. Glynn may not testify as to hearsay in connection with the work performed. He may, however, testify as to his personal observations, his general understanding, business records, and as to statements made by Mr. Mahmood, president of New Royal, to him.

Alfred Karman's motion to preclude the Board from adducing evidence at trial as to Mr. Karman's duty to supervise or approve certain work and barring damages must be denied (Mtn. Seq. No. 030)

Mr. Karman moves to (i) preclude the Board from adducing evidence that Mr. Karman had a contractual duty to supervise or approve work performed by J Construction Company LLC (**J Construction**) and its subcontractors on the façade and cupola and (ii) barring damage recovery as against Mr. Karman because the alleged damages are speculative and not reasonably certain.

Mr. Karman made these arguments to the Court previously, and the Court rejected them in the Summary Judgment Decision. In particular, the Court found that there was a factual issue as to whether Mr. Karman adequately performed the services for which he was retained (NYSCEF Doc. No. 1476, at 17). The Court also found that the findings of the Greyhawk Report, including, among other things, that Mr. Karman failed to perform an adequate number of inspections of the façade and approved deficient work, were not conclusory (*id.*). Finally, the Court already found that the Greyhawk Report was detailed and not speculative. The motion must therefore be denied.

J Construction, CRI, and KNS's motion to preclude the Board's expert testimony concerning its alleged damages must be denied (Mtn. Seq. No. 031)

J Construction, Cetra/Ruddy Incorporated and John A. Cetra Architecture, P.C. (hereinafter, collectively, **CRI**), and KNS Building Restoration Inc. (**KNS**) move to preclude the Board's experts from testifying as to the Board's alleged damages because they argue the Greyhawk Report provides no basis for its opinion on damages. The argument fails. As discussed above, the Court has already held that the Greyhawk Report was not speculative or conclusory but was specific in its findings (NYSCEF Doc. No. 1476, at 17). The Court also held in the Summary Judgment Decision that arguments regarding the experts' credentials and conclusions could not properly be resolved on a motion for summary judgment (*id.*, at 29). The issues raised potentially go to the weight of the expert's testimony, not its admissibility (*id.*, at 30). As discussed, the parties have proceeded in this case without taking expert depositions. It will be incumbent on either party presenting a witness as an expert to properly qualify that witness as an expert and lay appropriate foundation as to the areas in which that person's testimony is being offered as expert testimony. If there are any objections based on foundation, the Court will

address them at trial, including potentially permitting the objector to voir dire the witness as to their credentials and the basis for their testimony. Thus, the motion must be denied.

CRI's motion (Mtn. Seq. No. 032) to preclude is denied

CRI moves for an order to preclude (i) the Board's expert from offering testimony as to the standard of care applicable to a New York licensed architect providing architectural services on a similar project and testimony that CRI departed from that standard of care in performing their architectural services, (ii) the Board or any other party from offering evidence or testimony concerning the provisions contained in a B141/CMa-1992 Agreement or any unexecuted agreement at trial, (iii) the Board from offering evidence or testimony concerning the litigations and claims asserted in the prior wood window replacement litigations (the **Windows Litigation**), and (iv) removing CRI as defendants in this case because the Board's direct claims as against CRI have been dismissed.

CRI is not entitled to exclude testimony about the B141/CMa-1992 Agreement. The fact that they dispute that this agreement and not the B141-1997 Agreement is the operative agreement as to its obligations is factual and are issues for the jury. Nor are they entitled to preclude relevant testimony from the Windows Litigation. The Windows Litigation arose out of work to the building at issue here and addressed substantially similar types of claims, and admissions in that case are admissible, subject to the rules of evidence.

As discussed above, to the extent that CRI questions whether the Board's experts are qualified to provide an expert opinion as to the standard of care that architects provide under the same or

similar circumstances they may object at trial and, if appropriate, voir dire the expert witnesses. An expert witness must possess the requisite skill, training, education, knowledge or experience from which it can be assumed that their information or opinion is reliable (*People v Aguilar*, 206 AD3d 572, 573 [1st Dept 2022], *citing Matott v Ward*, 48 NY2d 455, 459 [1979]). The decision to qualify a witness as an expert witness is within the Court's sound discretion (*Board of Managers of 195 Hudson Street Condominium v 195 Hudson Street Assoc., LLC*, 63 AD3d 523, 524 [1st Dept 2009]). The relevant issue is whether or not the witness has the special knowledge or experience in a particular science, art, or trade to which the question relates (*Frye v U.S.*, 54 AppDC 46, 47 [DC Cir 1923]). Messrs. Manzo and Boland collectively have 80 years of experience in design, construction management, and dispute resolution for various projects and have worked on numerous projects in New York City, including working with architects and reviewing plans and specifications. Mr. Boland is also a credentialed Professional Engineer. As discussed above, it will be incumbent on the Board to certify Messrs. Manzo and Boland as expert witnesses and to lay the scope for any testimony they intend to give. The Court will entertain any objection to their testimony at the time of trial.

J Construction, CRI, and KNS's motion to preclude FSI and the Board's expert from testifying regarding MEP issues must be denied (Mtn. Seq. No. 033)

J Construction, CRI, and KNS's motion to preclude (i) a representative of FSI from testifying about alleged defects in the MEP systems, (ii) admission into evidence of the 2011 FSI MEP report, and (iii) Greyhawk from testifying regarding MEP issues in the building is denied. As an initial matter, the representatives of FSI are testifying as fact witnesses, not expert witnesses, and their testimony is admissible to that extent. FSI has not been identified as an expert witness in the case. They are testifying as to their personal observations. As such, they cannot offer

opinion testimony which requires specialized skill, training, education, knowledge, or experience, for which it can be assumed that their opinion is reliable as if they were experts. Greyhawk discussed in their report certain MEP issues. Thus, to the extent that an appropriate foundation is laid, they may testify as to MEP issues.

J Construction, CRI, and KNS's motion to preclude opinion testimony and admission of writings by persons whose opinions have not been disclosed must be denied (Mtn. Seq. No. 034)

J Construction, CRI, and KNS move to preclude the findings and opinions of certain remedial professional consultants, which they argue were adopted into the Greyhawk Report. This motion is predicated on the argument that the Greyhawk Report consists largely of the findings of certain remedial professional consultants, not Greyhawk. That argument fails. The findings of remedial professional consultants performed in the scope of their employment is not improper and, to the extent that the Greyhawk Report indicates that they are adopting the findings and opinions of the consultants as if true for the purpose of their report, this does not change the result. J Construction and the other defendants will be able to address their concerns on cross-examination by indicating or exploring why Greyhawk adopted or did not adopt certain factual findings by the consultants.

J Construction's motion to preclude the Board from referencing allegations or deposition testimony from the Windows Litigation must be denied (Mtn. Seq. No. 035)

As discussed above, the Windows Litigation involved the same building at issue here and addressed similar claims. The Windows Litigation is clearly relevant to the case at hand. Subject to the rules of evidence, there is no basis for the exclusion of testimony from the Windows Litigation.

J Construction's motion to order separate trials must be denied (Mtn. Seq. No. 036)

J Construction moves for an order for separate trials of (i) the Board's third-party beneficiary claim against J Construction and the Board's rights under any assignment, (ii) the Sponsor's breach of contract and contractual indemnification claims against J Construction and J Construction's third-party claims, and (iii) damages. Separate trials would involve in large part the same facts and the same witness. This would be highly inefficient. Thus, the motion must be denied. As discussed above, it is already the law of the case that the Sponsor assigned its claims to the Board, and the Board's rights under the assignment are not subject to determination at trial.

J Construction's motion for an order that the Court take judicial notice that it was architect-of-record and design applicant for the project and, therefore, had certain requirements under NYC Administrative Code must be denied (Mtn. Seq. No. 037)

J Construction moves for an order taking judicial notice that CRI was architect-of-record and design applicant for the project and that, under NYC Administrative Code, it was required to (i) make inspections during the progress and upon completion of work, (ii) make controlled inspections before reporting that work was completed, (iii) file controlled inspection reports before reporting that work was completed, and (iv) file a certification of completion attesting to the fact that all work was performed and completed in accordance with the approval or accepted plans and with the provisions of the building code. This motion must be denied. The Court can take judicial notice of facts which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy (*Hamilton v Miller*, 23 NY3d 592, 603 [2014]). The Court may not, however, take judicial notice of a fact that is controverted (*Walker*

ex re. Velilla v City of New York, 46 AD3d 278, 282 [1st Dept 2007]). Here, it is contested what CRI's obligations were under Administrative Code. This can either be addressed through expert testimony or by asking CRI questions at trial.

Seta's motion to dismiss all remaining claims and cross-claims against it must be granted solely to the extent of dismissing claims for contribution (Mtn. Seq. No. 040)

Frank Seta & Associates, LLC (**Seta**) moves for an order dismissing all remaining claims and cross-claims against it on the basis of its settlement with the Board. As Seta correctly points out, claims against it for contribution are mooted by its settlement with the Board pursuant to General Obligations Law § 15-108(b) which 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…"

Seta is not, however, entitled to dismissal of the claims asserted against it by Mr. Karman, J Construction, CRI, New Royal, and KNS for common law indemnification. These parties all can be liable for their acts and omissions to the Board, like J Construction could be liable to the Board as discussed in the Summary Judgment Decision. The common law indemnity claim assigned by the Sponsor to the Board as against various parties to this litigation failed because such parties could never be called upon based on a common law indemnity claim to indemnify the Sponsor because they could never be vicariously liable for what the Sponsor did or did not do. With the settlement of the claims against the Sponsor, there will not be a predicate claim of liability as against the Sponsor. There is no settlement with J Construction, Mr. Karman, CRI, New Royal, or KNS and the Board. There can be a finding of liability as against those defendants and, to the extent that their liability stems from services provided by Seta to the

extent that they are entitled to common law indemnification, Seta can be held vicariously liable. It does not matter that the Board settled any direct claims it had against Seta because this is not the relationship that forms the predicate for Seta's potential vicarious liability. The common law indemnification claims are also not thinly veiled contribution claims as Seta argues. It also does not matter that Seta argues as a factual matter that J Construction, Mr. Karmen, CRI, New Royal, or KNS could not have liability stemming from their services based on the manner in which they provided their recommendations. That is an argument for the jury. Lastly, the common law indemnification claims are not thinly veiled contribution claims, as Seta argues. Mr. Karman argues that the work was bifurcated or was otherwise split such that, depending on what if anything the jury were to find liability for, he would be entitled to full indemnification from Seta based on services that Seta performed to Mr. Karman. The Court has considered the remaining arguments and finds them unavailing.

It is hereby ORDERED that the motions in limine are decided to the extent set forth herein.

20230105182348AB0RR0K8D82FB5FFD354DF8BE71554510F9B7B4

1/5/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE