

Chubb Natl. Ins. Co. v Eyecrave Constr., Inc.

2023 NY Slip Op 30358(U)

February 3, 2023

Supreme Court, New York County

Docket Number: Index No. 152889/2022

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 152889/2022

CHUBB NATIONAL INSURANCE COMPANY AS
SUBROGEE OF JACQUELINE GORDON,

MOTION DATE 08/23/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

EYECRAVE CONSTRUCTION, INC.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

EYECRAVE CONSTRUCTION, INC.

Third-Party
Index No. 595331/2022

Plaintiff,

-against-

MAHARAL INCORPORATED

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 58, 59, 60, 64, 65, 66, 67, 68, 70, 71, 74, 76

were read on this motion to/for DISMISS

Upon the foregoing documents, Third-Party Defendant Maharal Incorporated's ("Maharal") motion to dismiss Defendant/Third-Party Plaintiff Eyecrave Construction, Inc.'s ("Eyecrave") Third-Party Complaint is granted in part and denied in part.

I. Factual and Procedural Background

Plaintiff Chubb National Insurance Company as subrogee of Jacqueline Gordon ("Plaintiff") commenced this action on April 5, 2022 seeking to recoup damages paid to its insured incurred by Eyecrave's allegedly negligent toilet maintenance (NYSCEF Doc. 1). Plaintiff insured real and personal property located at One Morton Square, Apt. 2AW, New York, New York (the

“Insured Unit”) (*id.* at ¶¶ 4-5). It is alleged that Eyecrave was contracted by Third-Party Defendant Maharal Incorporated (“Maharal”) to perform work on the guest bathroom located at One Morton Square, Apt. 5AW, New York, New York (the “Neighboring Unit”) (*id.* at ¶ 7). Plaintiff alleges that Eyecrave was negligent in failing to install a new connector when reinstalling the toilet and sink, and that as a result, water leaked and damaged the Insured Unit (*id.* at ¶¶ 8-10).

Eyecrave answered on April 12, 2022 (NYSCEF Doc. 3). Eyecrave filed a Third-Party Summons and Complaint on April 20, 2022 (NYSCEF Doc. 5). The Third-Party Complaint named Maharal as a Third-Party Defendant and seeks (1) indemnification pursuant to a contract between the parties and (2) contribution for any negligence for which Maharal may be found liable (*id.*). Maharal answered the Third-Party Complaint on May 24, 2022 (NYSCEF Doc. 7) and filed an Amended Answer on June 1, 2022 (NYSCEF Doc. 15). On June 3, 2022, Maharal and Chubb executed a release wherein Chubb released Maharal from all claims which could be alleged against Maharal in the case at bar (NYSCEF Doc. 32). Maharal filed a motion to dismiss Eyecrave’s Third-Party Complaint on August 11, 2022 (NYSCEF Doc. 24). Maharal is also seeking attorneys’ fees based on what it alleges is Eyecrave’s frivolous conduct in failing to execute a stipulation of discontinuance with Maharal.

Maharal argues that upon the execution of the release between Plaintiff and Maharal, Eyecrave’s cause of action seeking contribution from Maharal was extinguished pursuant to General Obligations Law §15-108(b) (NYSCEF Doc. 27). Further, Maharal argues that common law indemnification is not available to Eyecrave as Maharal was in no way responsible for the negligent acts which Plaintiff alleges caused them damages (*id.*).

In opposition, Eyecrave argues that the motion to dismiss is premature, and that the documentary evidence does not utterly refute Eyecrave’s claims (NYSCEF Doc. 60). Eyecrave

also argues that the release executed between Maharal and Chubb is an unenforceable “Mary Carter agreement” (*id.*). Finally, Eyecrave argues that its Third-Party Complaint should not be dismissed since it is also seeking “common law attorney fees and costs.” (*id.*).

In reply, Maharal asserts as this is a motion to dismiss based on pleadings and documentary evidence, there is no need for discovery, nor is the motion premature (NYSCEF Doc. 65). Maharal also provides a variety of other arguments in rebuttal as to why Eyecrave’s arguments are without merit (*id.*).

II. Discussion

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give a plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L.*

v SIC Holdings, LLC, 171 AD3d 189, 193 [1st Dept 2019]). A court may not dismiss a complaint based on documentary evidence unless the factual allegations are definitively contradicted by the evidence (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

General Obligations Law §15-108(b) provides that “[a] release given in good faith by the injured person to one tortfeasor...relieves him from liability to any other person for contribution”. Indeed, a general release executed by a plaintiff and a defendant will bar common law contribution claims brought by co-defendants against the released defendant (*Williams v New York City Transit Authority*, 9 AD3d 308 [1st Dept 2004]). Here, the release was entered prior to any judgment, for \$2,500, and there is no indication that the release was given in bad faith. Therefore, General Obligations Law §15-108(b) applies to bar Eyecrave’s common law contribution claim against Maharal (*see also Edgewater Apartments, Inc. v Flynn*, 268 AD2d 227, 227-228 [1st Dept 2000]); *Williams v New York City Health & Hosps. Corp.*, 262 AD2d 231, 232 [1st Dept 1999]). Although Eyecrave makes an argument about a “Mary Carter Agreement”, the cases cited to by Eyecrave are from lower courts in Florida which this Court finds unpersuasive. In any event, the Court does not find that the release at issue in this case could be considered a “Mary Carter Agreement.” Although Chubb is the Plaintiff in this action, and Chubb also happens to insure Maharal, Eyecrave has not raised any inference of collusion which would warrant a finding of bad-faith. Thus, there is no need for discovery, nor is this motion to dismiss premature, when a binding release, statute, and precedent definitively bar Eyecrave’s common law contribution claim against Maharal.

Similarly, Eyecrave’s common law indemnification cause of action fails as a matter of law. As stated by the Court of Appeals, the “right to indemnity, as distinguished from contribution, is not dependent upon legislative will, but springs from contract, express or implied, and full, not partial reimbursement is sought” (*see McDermott v City of New York*, 50 NY2d 211 [1980]).

Implied or common law indemnification is allowed where a party delegates exclusive responsibility for the duties giving rise to the loss to the party from whom indemnification is sought (*17 Vista Fee Assocs. v Teachers Ins. & Annuity Assn. of Am.*, 259 AD2d 75, 80 [1st Dept 1999]). A party who has itself participated to some degree in wrongdoing cannot receive the benefit of common law indemnification (*Trustees of Columbia Univ. v Mitchell/Giurgola Assoc.*, 109 AD2d 449 [1st Dept 1985]). Indeed, “[a] party sued solely for its own alleged wrongdoing, rather than on a theory of vicarious liability, cannot assert a claim for common law indemnification” *Esteva v Nash*, 55 AD3d 474 [1st Dept 2008] quoting *Mathis v Central Park Conservancy*, 251 AD2d 171, 172 [1998]).

Here, as the first-party Complaint alleges that Eyecrave is liable based only on its own wrongdoing, the Third-Party Complaint seeking common-law indemnification fails to state a cause of action (*see Great Am. Ins. Companies v Bearcat Fin. Servs., Inc.*, 90 AD3d 533[1st Dept 2011]). There is no allegation that Eyecrave is vicariously liable in Chubb’s Complaint (*see generally* NYSCEF Doc. 1). Rather, the allegations are that the loss stemmed from Eyecrave’s faulty installation of a toilet hose. Therefore, Eyecrave’s cause of action seeking common-law indemnification against Maharal fails to state a claim and must be dismissed.

Finally, Eyecrave’s argument that its Third-Party Complaint should not be dismissed because it is seeking attorneys’ fees is without merit, especially as it has no viable causes of action based in contract, statute, or the common law against Maharal.

While Maharal requests this Court to impose sanctions on Eyecrave for “frivolous conduct”, the Court, in an exercise of its discretion, declines to impose sanctions on Eyecrave. Sanctions are an extreme remedy and are to be used sparingly. This Court finds that the dismissal of the Third-Party Complaint provides adequate relief for Maharal.

Accordingly, it is hereby,

ORDERED that Maharal's motion seeking dismissal of Eyecrave's Third-Party Complaint is granted, and Eyecrave's Third-Party Complaint against Maharal is hereby dismissed; and it is further

ORDERED that at this time, the Court declines to award Maharal attorneys' fees and costs on the ground that Eyecrave has engaged in frivolous litigation; and it is further

ORDERED that within 10 (ten) days of entry, counsel for Maharal shall serve a copy of this Decision and Order, with notice of entry, the Clerk of the Court and all parties to this action; and it is further

ORDERED that such service shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-filing" page of the court's website at the address www.nycourts.gov/supctmanh); 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.

2/3/2023
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

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