

**Arias v Astoria-LIC Dev. LLC**

2023 NY Slip Op 30763(U)

March 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 515733/2017

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York on the 14<sup>th</sup> day of March 2023

HONORABLE FRANCOIS A. RIVERA  
-----X  
PEDRO ARIAS,

Plaintiff,

-against-

ASTORIA-LIC DEVELOPMENT LLC, and 11-55  
49<sup>TH</sup> AVENUE, LLC,

Defendants.

-----X  
ASTORIA-LIC DEVELOPMENT LLC, and 11-55  
49<sup>TH</sup> AVENUE, LLC,

Third-Party Plaintiffs,

-against-

ART STONE INTERIOR INC,

Third-Party Defendants.

-----X  
ASTORIA-LIC DEVELOPMENT LLC, and 11-55  
49<sup>TH</sup> AVENUE LLC,

Second Third-Party Plaintiffs,

-against-

DISCOVERY 2000 ASSOCIATE LLC, TOP GUN  
CONTRACTING, INC., and SUNSHINE OF EAST  
COAST INC.,

Second Third-Party Defendants.

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**DECISION & ORDER**

MOTION SEQ. No. 9

By Notice of Motion filed on April 29, 2022, Motion Seq. No. 9, Second Third-Party Defendant SUNSHINE OF EAST COAST, INC. (hereinafter SUNSHINE) moved this Court for an Order pursuant to CPLR §3212 granting summary judgment in its favor dismissing the third-party complaint of Second Third-Party Plaintiffs ASTORIA-LIC DEVELOPMENT LLC (ASTORIA-LIC) and 11-55 49<sup>TH</sup> AVENUE LLC (49<sup>th</sup> AVENUE) in its entirety, along with any and all cross-claims and counterclaims. The following papers numbered NYSCEF Doc. No. 190-212; 216-217; and 220 have been considered.

After oral argument, the Order of this Court is as follows.

Second Third-Party Defendant SUNSHINE OF EAST COAST INC.'s motion for summary judgment dismissing the second third-party complaint is GRANTED in its entirety.

In the underlying action for personal injuries, plaintiff commenced suit against Defendants/Second Third-Party Plaintiffs ASTORIA-LIC and 49<sup>th</sup> AVENUE alleging that on June 9, 2017, he was caused to fall from a height due to an unsecured ladder and a hazardous, slippery condition in violation of New York Labor Law §§ 240 (1) and 241(6). The second third-party complaint against SUNSHINE alleges causes of action for common law indemnification, contribution, contractual indemnification, breach of contract and failure to indemnify.

The Court found that Second Third-Party Defendant SUNSHINE met its prima facie burden establishing its entitlement to summary judgment as a matter of law in showing that the contractual indemnification provision between Second Third-Party Plaintiffs ASTORIA-LIC and SUNSHINE was not triggered. The contract provides, in relevant part, "Subcontractor shall indemnify and hold harmless the Owner, Contractor ... against any claims, damages... arising out of or resulting from performance of the subcontractor's work under this subcontract, *but only to the extent caused by the negligent acts or omissions of the subcontractor.*"


Here, the uncontroverted evidence establishes that SUNSHINE, the concrete Subcontractor, was retained by ASTORIA-LIC to reinforce the concrete superstructure of the building. During its work, SUNSHINE installed a temporary wooden ladder to access the bulkhead roof, which was above the roof elevation. Upon completion of its work in January 2017, and at the behest of the General Contractor ASTORIA-LIC, the temporary ladder was left in place by SUNSHINE because a permanent ship's ladder had not yet been installed and the temporary ladder was the only means of egress to the bulkhead roof. After SUNSHINE completed its work at the job site, other trades continued to use the temporary ladder including plaintiff's employer, Artstone Interior, Inc. SUNSHINE never received any complaints or notice of any issues regarding the temporary ladder prior to plaintiff's accident. The undisputed testimony further shows that the General Contractor, ASTORIA-LIC, was responsible for site safety, including inspecting and maintaining the temporary wooden ladder free of any defective or hazardous conditions. ASTORIA-LIC's Superintendent and Site Safety contractor performed daily inspections and walk throughs of the work site. If they observed a spoils on the ladder or dangerous condition, they had the authority to stop the work and have the condition remedied. Contrary to ASTORIA-LIC's contentions, SUNSHINE had no contractual duty to inspect or maintain the temporary ladder after completion of its work in January 2017. Moreover, SUNSHINE had no obligation or duty to advise or instruct ASTORIA-LIC on how to maintain the ladder or how to avoid and/or remedy spoils on the ladder. Accordingly, Second Third-Party Plaintiffs ASTORIA-LIC and 49<sup>th</sup> AVENUE have failed to raise a triable issue of fact that SUNSHINE was negligent in bringing about plaintiff's accident or that plaintiff's accident was the result of its acts or omissions in the performance of its work under the contract. Accordingly, the third-party claim for contractual indemnification is dismissed.

The branch of SUNSHINE's motion seeking summary judgment dismissing the third-party claims for common law indemnification and contribution are also dismissed as SUNSHINE has met its prima facie burden establishing that it was free from negligence in bringing about plaintiff's accident. In opposition, second Third-Party Plaintiffs failed to raise a triable issue of fact. Likewise, the branch of SUNSHINE OF EAST COAST INC.'s motion seeking to dismiss the third-party claims for breach of contract and failure to indemnify are also dismissed without opposition. Contrary to CPLR 2214, Sunshine did not explain why it moved to dismiss all counterclaims and cross claims asserted against it. There are apparently none, so this branch of its motion will be disregarded.

#### CONCLUSION

The motion by Second Third-Party Defendant SUNSHINE OF EAST COAST, INC. urt for an Order pursuant to CPLR §3212 granting summary judgment in its favor dismissing the third-party complaint of Second Third-Party Plaintiffs ASTORIA-LIC DEVELOPMENT LLC and 11-55 49TH AVENUE LLC is granted.

ENTER:



J.S.C.

**HON. FRANCOIS A. RIVERA**  
J.S.C.