

Sternkopf v 395 Hudson N.Y., LLC

2023 NY Slip Op 31729(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 160764/2018

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

EUGENE STERNKOPF,

Plaintiff,

- v -

395 HUDSON NEW YORK, LLC, EMMIS
COMMUNICATIONS CORPORATION,

Defendant.

-----X

395 HUDSON NEW YORK, LLC

Plaintiff,

-against-

JAMES E. FITZGERALD INC., PAR FIRE PROTECTION, LLC,
PAR PLUMBING CORP., EMMIS RADIO, LLC.

Defendant.

-----X

JAMES E. FITZGERALD INC.

Plaintiff,

-against-

ARI PRODUCTS INC.

Defendant.

-----X

EMMIS COMMUNICATIONS CORPORATION

Plaintiff,

-against-

JAMES E. FITZGERALD, INC., PAR FIRE PROTECTION,
LLC, PAR PLUMBING CORP., ARI PRODUCTS, INC.

Defendant.

-----X

INDEX NO. 160764/2018

MOTION DATE 12/15/2022,
12/15/2022

MOTION SEQ. NO. 011 012

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595983/2019

Second Third-Party
Index No. 595370/2020

Third Third-Party
Index No. 595415/2020

JAMES E. FITZGERALD INC.

Fourth Third-Party
Index No. 595490/2020

Plaintiff,

-against-

FINDLAY INSTALLATION SERVICES, L.L.C. D/B/A FINDLAY
INSTALLATION

Defendant.

-----X

EMMIS COMMUNICATIONS CORPORATION

Fifth Third-Party
Index No. 595578/2020

Plaintiff,

-against-

ARI PRODUCTS, INC.

Defendant.

-----X

EMMIS COMMUNICATIONS CORPORATION

Sixth Third-Party
Index No. 595579/2020

Plaintiff,

-against-

JAMES FITZGERALD, PAR FIRE PROTECTION LLC, PAR
PLUMBING CORP., EMMIS RADIO LLC, ARI PRODUCTS
INC., FINDLAY INSTALLATION SERVICES

Defendant.

-----X

ARI PRODUCTS, INC.

Seventh Third-Party
Index No. 595612/2020

Plaintiff,

-against-

FINDLAY INSTALLATION SERVICES, LLC D/B/A FINDLAY
INSTALLATION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 011) 417, 418, 419, 420,
427, 430, 432, 433, 440, 441, 442, 443, 445

were read on this motion to/for

REARGUMENT/RECONSIDERATION

The following e-filed documents, listed by NYSCEF document number (Motion 012) 421, 422, 428, 431, 446

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Various parties have moved to reargue and for clarification of this Court's order dated, November 2, 2022. The motions for reargument and clarification are granted, and the decision and order of this Court, as it pertains to motions sequences 11 and 12, is as modified as indicated below.

Motion Sequence 11

Preliminarily this Court must address a procedural defect overlooked in its last decision. Third-party defendant/ second third-party plaintiff/ third third-party defendant/ fourth third-party plaintiff James E. Fitzgerald, Inc.'s ("JEF") is not a direct defendant in this action, accordingly any portion of its motion that seeks relief as against the plaintiff is denied. Notwithstanding that determination, as this Court has dismissed the direct claims pursuant to Labor Law § 200, and common-law negligence, as against defendants 395 Hudson New York, LLC ("395 HUDSON"), and Emmis Communications Corporation, Emmis Radio, LLC (collectively "EMMIS"), specifically defendant JEF is granted relief as a matter of law as there are no longer any claims in the first party action arising out of Labor Law § 200, and common-law negligence to which there can be liability based on contribution or indemnification.

It is undisputed that JEF specifically imposed a duty on itself to remove the debris, specifically the carpet scraps that caused plaintiff's accident. The Court rejects JEF's contentions that specific notice was required, especially in light of the fact that it is undisputed that JEF would have laborers remove the scraps multiple times per day.

Accordingly, as to the claims arising out of Labor Law § 241(6), for the reasons stated in this Court's decision (NYSCEF Doc. 448), JEF's motion to dismiss the third-party complaints as

against it is denied. Additionally, the prior Order of this Court is modified with respect to JEF's motion seeking indemnification from ARI Products, Inc. ("ARI"), that is also denied, as JEF has failed to establish that it is free from negligence. Further, the portion of JEF's motion that seeks to reargue the granting of summary judgment and dismissal of common law indemnity claims to fourth third-party defendant/sixth third-party defendant/ seventh third-party defendants Findlay Installation Services, LLC d/b/a Findlay Installation ("FIS") is granted and modified to the extent that JEF's common law indemnity claims as against FIS survive FIS's motion for summary judgment.

Motion Sequence 12

FIS seeks to reargue the portion of this Court's order that granted summary judgment to second third-party defendant/third third-party defendant/fifth third-party defendant/seventh third-party plaintiff ARI.

The Court agrees that it overlooked the negligence trigger in the underlying contract between the parties. As there is a question of fact as to which entity was negligent, either JEF or FIS or both, the Court modifies its prior Decision and Order and finds that ARI is entitled to a conditional grant of summary judgment as to its contractual indemnification and contribution claims.

ORDERED that the Decision of this Court as it pertains to James E. Fitzgerald, Inc.'s underlying motion, motion sequence 008 is modified in that its motion seeking indemnification from PAR FIRE is DENIED; and it is further

ORDERED that the Decision of this Court as it pertains to Findlay Installation Services, LLC d/b/a Findlay Installation's underlying motion, motion sequence 007 is modified in that its

motion dismissing James E. Fitzgerald, Inc.'s claims for common law indemnification is DENIED; and it is further

ORDERED that the Decision of this Court as it pertains to ARI Products, Inc's cross-motion, motion sequence 007, is modified in that its motion seeking summary judgment as against FIS, ARI is granted conditional summary judgment.

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5/23/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE