

**Privilege Underwriters Reciprocal Exch. v 201 Water
St. LLC**

2023 NY Slip Op 34024(U)

October 2, 2023

Supreme Court, Kings County

Docket Number: Index No. 516020/2021

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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At an IAS Term, Part 13, of the Supreme Court of the State of New York, held in the County of Kings, at the courthouse at 320 Jay Street, Brooklyn, New York, on the 2nd day of October 2023.

P R E S E N T:

HON. RUPERT V. BARRY, A.J.S.C.

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PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE as subrogee of MAX MAEDER and ANNE MCGILLICUDDY,

Plaintiff,

-against-

Motion Seq. No.: 1
Cal. No.: 26
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201 WATER STREET LLC, ADAM AMERICA LLC d/b/a ADAM AMERICA REAL ESTATE, SLATE PROPERTY GROUP LLC, HUDSON MERIDIAN CONSTRUCTION GROUP LLC, DANYA CEBUS CONSTRUCTION, LLC, DCHM, a joint venture between Danya Cebus Construction, LLC and Hudson Meridian Construction Group LLC, VERSATILE MECHANICAL SERVICES CORPORATION, MEC GENERAL SERVICE CORP., and ABC
Defendant.

DECISION AND ORDER

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Defendants/Third Party Plaintiffs: 201 Water Street, LLC, Adam America LLC d/b/a Adam America Real Estate, Slate Property Group LLC (hereinafter collectively "201 Water Street, LLC"), motion for summary judgment seeking contractual indemnification from all Third-Party Defendants: NYSCEF Doc. Nos: 24 – 47.

Upon review of the papers filed in regard to Defendants/Third Party Plaintiffs motion for summary judgment, this Court finds as follows:

This action stems from a Summons and Complaint that was filed by Plaintiff, Privilege Underwriters Reciprocal Exchange, seeking judgment in the amount of \$353,902.83 as reimbursement for monies it paid to the owners of the real property alleged to have sustained

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property damage at the hands of the named Defendants: Hudson Meridian Construction Group LLC, Danya Cebus Construction LLC, and DCHM (General Contractors); and Versatile Mechanical Services Corporation, MEC General Service Corp., and ABC Corporations 1-10 (Subcontractors). Subsequent to Defendants filing their respective answers, demands and crossclaims, Defendants/Third Party Plaintiffs 201 Water Street, LLC filed the instant motion for summary judgment seeking contractual indemnification from all Third-Party Defendants. Defendants Versatile, MEC and DCHM filed opposition papers, each seeking denial of the motion. After a thorough review of the file and after oral arguments heard on the record, for the reasons stated below, the motion is **denied**.

On a motion for summary judgment, the moving party bears the burden of making *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Trustees of Columbia Univ. in the City of N.Y. v. D'Agostino Supermarkets, Inc.*, 36 NY3d 69 [2020]). If the moving party fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hosp.*, 68 NY2d at 324).

However, where the moving party proffers the required evidence, the burden shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*Trustees of Columbia Univ. in the City of N.Y. v. D'Agostino Supermarkets, Inc.*, 36 NY3d at 74). With respect to the motion, the "facts must be viewed in the light most favorable to the non-moving party (*Vega v. Restani Constr. Corp.*, 18 NY3d 499 [2012]). The motion should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable (*Forrest v. Jewish Guild for the Blind*, 3 NY3d 295 [2004]).

A party is entitled to full contractual indemnification provided that the intention to

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indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances (*Shaughnessy v Huntington Hosp. Assn.*, 147 AD3d 994 [2d Dept 2017]; *Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82 [1st Dept 2018]). Here, 201 Water Street, LLC and the General Contractors executed a standard form agreement that contained a very similar indemnification clause to the one in *Shaughnessy v Huntington Hosp. Assn.*, 147 AD3d 994 (2d Dept 2017). As in *Shaughnessy*, the indemnification provision at issue here similarly required the general contractor, here DCHM, to indemnify 201 Water Street LLC for “claims, damages, loss or expense . . . arising out of or resulting from performance of the Work... but only to the extent covered by the insurance policies purchased by the Owner for Contractor... and caused by the negligent or intentional acts or omissions of the Contractor [DCHM] or Subcontractor [Versatile] or [MEC] or anyone for whose acts they may be liable.”

Shaughnessy requires that in order for the party seeking indemnification to be entitled to such, there must first be a showing that the plaintiff's injuries were caused in whole or in part by the party or parties from whom indemnification is sought (*Id.* At 1000). As in *Shaughnessy*, it has not been determined here whether Plaintiffs' injuries were caused in whole or in part by Versatile, MEC or DCHM. Consequently, 201 Water Street LLC failed to establish its *prima facie* entitlement to judgment as a matter of law on its claim for contractual indemnification against all Third-Party Defendants (*see Shaughnessy v Huntington Hosp. Assn.*, 147 AD3d at 1000).

Furthermore, in *Cedillo v Nautilus Realty Ltd. Partnership*, 2023 NY App Div Lexis 4524 (2d Dept 2023) where that court held that the third-party plaintiffs' motion for contractual indemnification should have been granted, in that among other thing, the third-party plaintiffs in that case made a *prima facie* that they were not negligent, and that the third-party defendants failed to raise a triable issue of fact due to insufficient evidence presented to dispute that the claim arose

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out of the performance of the contracted work. Here, however, 201 Water Street LLC failed to demonstrate, *prima facie*, that they were not negligent and that they did not supervise or direct the work that caused Plaintiff's injuries. Accordingly, it is

ORDERED, that Defendants/Third Party Plaintiffs, 201 Water Street, LLC's motion for summary judgment as against all Third-Party Defendants is DENIED.

This constitutes the decision and order of this Court.

*All applications not specifically addressed herein are Denied.



HON. RUPERT V. BARRY, A.J.S.C.
HON. RUPERT BARRY

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