

**Rampersaud v Whipple Props. LLC**

2023 NY Slip Op 34608(U)

December 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 511366/2018

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 13

-----X  
GURDAT RAMPERSAUD,

*Plaintiff,*

-against-

WHIPPLE PROPERTIES LLC, WALWORTH FLATS  
LLC, SUNSHINE CONSTRUCTION USA INC.,  
ALLIED SAFETY CONSULTANTS INC. and  
SNBD ENTERPRISES LLC,

Motion Seq. No.: 7  
Cal. No.: 7  
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**DECISION & ORDER**

Defendants.

-----X  
WHIPPLE PROPERTIES LLC and SUNSHINE  
CONSTRUCTION USA INC.,

*Third-Party Plaintiff,*

-against-

GC STUD INC.

*Third-Party Defendant.*  
-----X

UPON THE NOTICE OF MOTION of McMahon, Martine & Gallagher dated March 27, 2023 for Summary Judgment on behalf of Defendants/Third-Party Plaintiffs Whipple Properties LLC and Sunshine Construction USA Inc. (“Whipple” and “Sunshine”) (Motion Sequence #7; NYSCEF Doc. #141), and the Court having considered the Affirmation in Support, Statement of Material Facts, and Exhibits submitted in support thereof (NYSCEF Docs. #142-145), and the Plaintiff and Third-Party Defendant GC Stud Inc. (“GC Stud”) having submitted no opposition thereto, and there having been no appearance in this action by Defendants Walworth Flats LLC, Allied Safety Consultants Inc, and SNBD Enterprises LLC, and the motion having duly come to

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be heard before the Honorable Rupert V. Barry on August 23, 2023, and Counsel for Defendants/Third-Party Plaintiffs having appeared, and there being no appearance by Counsel for Plaintiff or by Counsel for Third-Party Defendant GC Stud Inc. ("GC Stud"), and Counsel for Defendants/Third-Party Plaintiffs having been heard to withdraw that part of their motion seeking dismissal of Plaintiff's complaint as moot, and there having been no appearance by counsel for Plaintiff in support of Plaintiff's motion (motion seq # 5) and counsel for Whipple and Sunshine having been heard in support of that part of their motion seeking an Order declaring that GC Stud is obligated to defend and indemnify Whipple and Sunshine pursuant to written contract and to reimburse Whipple and Sunshine for all fees, disbursements and costs incurred in the defense of this action, including all attorney fees,

**NOW** upon the Motion of McMahon, Martine & Gallagher, LLP attorneys for Defendants/Third-Party Plaintiffs Whipple Properties LLC and Sunshine Construction USA Inc., and upon the due deliberation of the Court herein, it is hereby:

**DECIDED**, that Defendants/Third-Party Plaintiffs's motion for summary judgment on Labor Law sections 200, 240(1), 241(6) and common law negligence is withdrawn as moot (motion seq. 5).

**DECIDED**, that Defendants/Third-Party Plaintiffs Whipple and Sunshine have satisfied their *prima facie* entitlement to summary judgment on their contract claims against Third-Party Defendant GC Stud for defense, contractual indemnity, and reimbursement of all attorneys' fees, disbursements and costs incurred in the defense of this action.

It is undisputed that Plaintiff was an employee of GC Stud and that Plaintiff's accident arose out of GC Stud's work at the accident location. The clear and unambiguous terms of the indemnification clause of the subcontract agreement entered into by Sunshine and GC Stud

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obligated GC Stud “to the fullest extent permitted by law” to defend and indemnify and hold harmless, at GC Stud’s sole expense, Whipple and Sunshine from and against all liability or claimed liability for bodily injury or death to any person, “including all attorney fees, disbursements and related cost” arising out of or resulting from the Work covered by the subcontract to the extent such Work was performed by or contracted through GC Stud, excluding only liability created by the sole and exclusive negligence of Sunshine and Whipple. It is undisputed that Whipple and Sunshine were not negligent.

“A party is entitled to full contractual indemnification provided that the ‘intention to indemnify can clearly be implied from the language and purpose of the entire agreement and the surrounding facts and circumstances’” (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987] [*internal citations omitted*]).

The indemnification provision’s “arising out of” and “resulting from” work/services requirement is satisfied as a matter of law because Plaintiff was injured while performing the same work and services that GC Stud was subcontracted to perform. The indemnification obligations under the subcontract agreement are also not contingent on a showing of GC Stud’s negligence and are triggered irrespective of GC Stud’s presence on the site since the alleged liability herein arose out of and resulted from GC Stud’s work and services (*see Brown v Two Exchange Plaza Partners*, 76 NY2d 172, 178 [1990]). Accordingly, it is

ORDERED, that the within motion of Defendants/Third-Party Plaintiffs Whipple Properties LLC and Sunshine Construction USA Inc. is GRANTED against Third-Party Defendant GC Stud Inc. It is further

ORDERED, that Third-Party Defendant GC Stud Inc. is obligated to defend and indemnify Defendants/Third-Party Plaintiffs Whipple Properties LLC and Sunshine Construction

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USA Inc. for this action, and to reimburse all attorneys' fees, costs, and disbursements incurred in the defense of this action.

**ORDERED**, that the Third-Party Complaint is hereby severed, and the Clerk of the Kings County Supreme Court is directed to assign the Third-Party Complaint with a new Index Number upon the filing of this Decision and Order for purposes of permitting Defendants/Third-Party Plaintiffs Whipple Properties LLC and Sunshine Construction USA Inc. to seek enforcement of this Order.

Judgment dated and entered in all respects. This constitutes a decision and order of this Court.

\*All applications not specifically addressed herein are denied.

Dated: December 11, 2023

  
HON. JUSTICE RUPERT V. BARRY

HON. RUPERT BARRY

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KINGS COUNTY CLERK  
FILED