

Maurizaca v 201 Water St., LLC.

2024 NY Slip Op 31000(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 159770/2015

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

JUAN M. MAURIZACA,

Plaintiff,

- v -

201 WATER STREET, LLC., DCHM, A JOINT VENTURE
BETWEEN DANYA CEBUS CONSTRUCTION, LLC AND
HUDSON MERIDIAN CONSTRUCTION GROUP, LLC,

Defendants.

-----X

201 WATER STREET, LLC., DCHM, A JOINT VENTURE
BETWEEN DANYA CEBUS CONSTRUCTION, LLC AND
HUDSON MERIDIAN CONSTRUCTION GROUP, LLC

Plaintiffs,

-against-

APEX RESTORATION CORP.

Defendant.

-----X

201 WATER STREET, LLC., DCHM, A JOINT VENTURE
BETWEEN DANYA CEBUS CONSTRUCTION, LLC AND
HUDSON MERIDIAN CONSTRUCTION GROUP, LLC

Plaintiffs,

-against-

RED HOOK CONSTRUCTION GROUP - II, LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 285, 286, 287, 288,
289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 303, 304, 305, 307

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

INDEX NO. 159770/2015
MOTION DATE 10/12/2023
MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595628/2017

Second Third-Party
Index No. 595162/2018

Defendants / Third-Party Plaintiffs 201 WATER STREET LLC, (“201 Water”) and DCHM, a Joint Venture Between DAYNA CEBUS CONSTRUCTIONS, LLC. and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC (“DCHM”) move pursuant to CPLR § 2221(d) to reargue the portion of their motion for summary judgement (MS #5) seeking summary judgment on their contractual indemnification, and breach of contract for failure to procure insurance claims as against third-party defendant, APEX RESTORATION CORP. By decision and order dated May 25, 2023 defendants / third-party plaintiff’s motion for summary judgment on these claims was denied (NYSCEF Doc No 281). They also seek to reargue the portion of their summary judgment motion seeking to dismiss plaintiff’s Labor Law § 241(6) claim as against them. The May 25, 2023 decision and order denied summary judgment for the 241(6) claim (*id.*).

Reargue

“A motion for leave to reargue ... shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion (CPLR § 2221[d][2]). When movants fail to show any facts or law previously overlooked by the court and seek merely to relitigate issues previously considered and decided by the court, their motion must be denied (*Setters v. AI Prop. & Dev. Corp.*, 139 AD3d 492 [1st Dept 2016]).

Contractual Indemnification

Summary judgment on the contractual indemnification claim was denied because “before [the] indemnification provision is triggered, there must be a finding that Apex was, in fact, negligent with respect to plaintiff’s accident” (NYSCEF Doc No 281). The indemnity provision in the AIA agreement states:

To the fullest extent permitted by law, [Apex] shall indemnify and hold harmless the Owner, [Bay], Architect, Architect’s consultants,

and agents and employees of any of them from and against claims . . . arising out of or resulting from performance of [Apex's] Work under this Subcontract . . . but only to the extent caused by the negligent acts or omissions of [Apex]

Defendants / third-party plaintiffs argue that the court overlooked language in the indemnity provision of the Endorsement / Subcontract Agreement Rider which does not include language limiting indemnification to acts arising out of Apex's negligent acts. Specifically, this provision states:

In consideration of the Contract Agreement, and to the fullest extent permitted by law, the Subcontractor shall defend and shall indemnify, and hold harmless, at Subcontractor's sole expense. the Contractor, all entities the Contractor is required indemnify and hold harmless, the Owner of the property, and the officers, directors, agents, employees, successors and assigns of each of them from and against all liability or claimed liability for bodily injury or death to any person(s), and for any and all property damage or economic damage, including all attorney fees, disbursements and related costs, arising out of or resulting from the Work covered by this Contract Agreement to the extent such Work was performed by or contracted through the Subcontractor or by anyone for whose acts the Subcontractor may be held liable, excluding only liability created by the sole and exclusive negligence of the Indemnified Parties. This indemnity agreement shall survive the completion of the Work specified in the Contract Agreement.

(NYSCEF Doc No 193).

However, “[w] here two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give them both effect” (*Lenart Realty Corp. v Petroleum Tank Cleaners, Ltd.*, 116 AD3d 536, 537 [1st Dept 2014] [internal quotation marks removed]). In *Lenart*, as here there were two provisions regarding indemnification in the contract between the parties, one limiting indemnification only to acts arising out of negligence and another that did not include that limitation (*id.* at 536-537). The court stated that “the first paragraph of the indemnification provision [including the limitation] must be read as limiting the

subsequent paragraph” (*id.* at 537). An opposite “interpretation renders meaningless the first paragraph of the indemnification provision” (*id.*). Therefore, as in *Lenart*, the indemnification provision is only triggered upon a showing of negligence by Apex, a determination which has not yet been made in this case.

Accordingly, defendants / third-party plaintiffs have failed to show any facts overlooked by the court and their motion to reargue this portion of their summary judgment motion will be denied.

Breach of Contract

Defendants / third-party plaintiffs seek to merely relitigate issues previously considered and decided because as stated in the May 25, 2023 decision and order “[Movants] do not deny that Apex procured insurance. The issues of whether defendants are properly additional insureds under that policy, or whether certain exclusions apply that otherwise prevent coverage, are not before this court; and Apex’s insurer is not a party to this action” (NYSCEF Doc No 281). Accordingly, defendants / third-party plaintiffs have failed to show any facts overlooked by the court and their motion to reargue this portion of their summary judgment motion will be denied.

Labor Law 241(6)

Defendants / third-party plaintiffs again seek to merely relitigate issues previously considered and decided by the court because as stated in the May 25, 2023 decision and order:

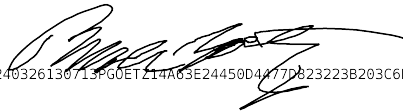
The uncontested facts are that plaintiff (1) was tasked by his supervisor with demolition work and (2) was approaching that area to begin his work when he was injured. These facts do not establish, as a matter of law, that plaintiff was not engaged in an operation where it was unforeseeable that he could receive an eye injury

(*id.*).

Accordingly, defendants / third-party plaintiffs have failed to show any facts overlooked by the court and their motion to reargue this portion of their summary judgment motion will be denied.

Based on the foregoing it is,

ORDERED that the motion is denied in its entirety.


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3/26/2024
DATE

PAUL A. GOETZ, 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