

Swiergalski v Perlbinder Holdings, LLC

2024 NY Slip Op 31975(U)

February 26, 2024

Supreme Court, Kings County

Docket Number: Index No. 514245/2019

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 26th day of February 2024

HONORABLE FRANCOIS A. RIVERA

_____ X

PIOTR P. SWIERGALSKI,

Plaintiff,

-against-

PERLBINDER HOLDINGS, LLC, COUSINS COMPANY, MARBRU ASSOCIATES 330 W. 56TH STREET CORPORATION, 330 WEST 56TH STREET ASSOCIATES, CHARLES H. GREENTHAL MANAGEMENT CORP. And PRATT CONSTRUCTION & RESTORATION INC.,

Defendants,

_____ X

PERLBINDER HOLDINGS, LLC, COUSINS COMPANY, MARBRU ASSOCIATES 330 W. 56TH STREET CORPORATION, 330 WEST 56TH STREET ASSOCIATES, and CHARLES H. GREENTHAL MANAGEMENT CORP.

Third Party Plaintiffs,

-against-

RBS RENOVATION CORP.,

Third Party Defendant.

_____ X

PRATT CONSTRUCTION & RESTORATION INC.,

Second Third Party Plaintiff,

-against-

RBS RENOVATION CORP.,

Second Third Party Defendant.

_____X

PRATT CONSTRUCTION & RESTORATION INC.,

Third Third Party Plaintiff,

-against-

RITEWAY RENOVATION INC.,

Third Third Party Defendant.

_____X

RBS RENOVATION CORP.,

Fourth Third Party Plaintiff,

-against-

RITEWAY RENOVATION INC.,

Fourth Third Party Defendant.

_____X

By motion filed on September 27, 2023 under motion sequence three, Third and Fourth Party Defendant RITEWAY RENOVATION, INC. sought an order pursuant to CPLR 3212 and Workers' Compensation Law Section 11 dismissing the third and fourth party claims for common law indemnification and contribution brought by Third Party Plaintiff PRATT CONSTRUCTION & RESTORATION INC. and Fourth Third Party Plaintiff RBS RENOVATION CORP. because Plaintiff PIOTR P. SWIERGALSKI did not sustain an acquired injury to the brain caused by an external physical force resulting in permanent total disability and

unemployability in any capacity. The following NYSCEF documents numbered 139-147 and 164-175 were considered.

After oral argument, the order of the Court is as follows.

The claims for common law indemnification and contribution of the Third Third Party Plaintiff PRATT CONSTRUCTION & RESTORATION, INC. are dismissed as abandoned by having failed to submit opposition, *Elam v. Ryder Systems, Inc.*, 176 AD 3d 675 (2nd Dept., 2019). The claims of the Third Third Party Plaintiff PRATT CONSTRUCTION & RESTORATION, INC. for common law indemnification and contribution would otherwise have been dismissed together with the claims of the Fourth Third Party Defendant RBS RENOVATION CORP. for common law indemnification and contribution as barred by the Workers' Compensation Law Section 11 because Plaintiff PIOTR P. SWIERGALSKI did not sustain a grave injury, *Rubeis v Aqua Club*, 3 NY3d 408,(2004). Workers' Compensation Law § 11 precludes recovery by any third party for contribution and indemnity against an entity determined by the Worker' Compensation Board to be the plaintiff's employer except where the injured employee has suffered a grave injury or where the employer has expressly agreed in writing to contribute or indemnify (*Velazquez–Guadalupe v Ideal Builders and Construction Services*, 216 AD3d 63 [2 Dept.,2023]). Apr. 19, 2023).

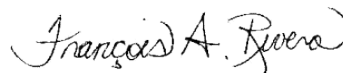
CONCLUSION

Third and Fourth Party Defendant RITEWAY RENOVATION, INC.'s motion for an order pursuant to CPLR 3212 and Workers' Compensation Law Section 11 dismissing the third and fourth party claims for common law indemnification and contribution brought by Third

Party Plaintiff PRATT CONSTRUCTION & RESTORATION INC. and Fourth Third Party Plaintiff RBS RENOVATION CORP. is granted in its entirety.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.