

Traub v Basketball City N.Y. LLC

2024 NY Slip Op 32862(U)

August 14, 2024

Supreme Court, New York County

Docket Number: Index No. 151596/2018

Judge: James d'Auguste

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. James E. d'Auguste

PART 55

Justice

-----X

MARK TRAUB,

Plaintiff,

- v -

BASKETBALL CITY NEW YORK LLC, BASKETBALL CITY
U.S.A. LLC, VIACOM INTERNATIONAL INC., VIACOMCBS
INC., NEW GAMES PRODUCTIONS, INC.,

Defendants.

-----X

BASKETBALL CITY NEW YORK LLC, BASKETBALL CITY
U.S.A. LLC,

Plaintiffs,

-against-

NEW GAMES PRODUCTION INC.,

Defendant.

-----X

VIACOM INTERNATIONAL INC., VIACOMCBS INC., NEW
GAMES PRODUCTIONS INC.,

Plaintiffs,

-against-

PIER PRODUCTIONS & ENTERTAINMENT LLC,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 268

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595426/2019

Second Third-Party
Index No. 595530/2020

In Motion Sequence 006, Defendant/Third-Party Defendant/Second Third-Party Plaintiff New Games Production Inc. (“NGPI”), Defendant/Second Third-Party Plaintiff Viacom International Inc., and Defendant/Second Third-Party Plaintiff ViacomCBS Inc. (Viacom International and ViacomCBS collectively as “Viacom”) move for summary judgment, seeking to dismiss the Labor Law Sections 200, 240(1), and 241 causes of action against them; NGPI moves for summary judgment, seeking to dismiss Basketball City New York LLC and Basketball City U.S.A’s (“BBC”) cross-claims for contribution, common-law indemnification, contractual indemnification, and a cause of action for insurance coverage; and NGPI and Viacom move for summary judgment against Pier Productions & Entertainment LLC (“PPE”) for common-law and contractual indemnification. PPE opposes and cross-moves against NGPI and Viacom to dismiss all claims against PPE. Plaintiffs and BBC also oppose the motion. The motion is resolved as set forth below.

As an initial matter, the Court granted partial summary judgment to plaintiff as to plaintiff’s Labor Law Section 240(1) claim in the decision and order on Motion Sequence 002 (dated November 18, 2022, NYSCEF Doc. No. 244). The Court held in abeyance any additional claims under the Labor Law. Therefore, the branches of NGPI’s and Viacom’s motion seeking summary judgment against plaintiff are denied.

Viacom/NGPI move to dismiss BBC’s cross-claim for insurance coverage, and PPE cross-moves to dismiss Viacom/NGPI’s claims for breach of contract for failure to procure insurance. PPE’s policy with Nationwide demonstrates that Viacom, NGPI, and BBC are listed as additional insureds under PPE’s insurance policy. NYSCEF Doc. No. 216. This branch of PPE’s cross-motion is granted. However, Viacom/NGPI have not demonstrated that BBC is listed as an additional insured under their comprehensive general liability policy, and, instead,

states that BBC has suffered no damages because BBC is listed under PPE's policy. NYSCEF Doc. No. 195, at p.17. Therefore, the branch of Viacom/NGPI's motion seeking to dismiss BBC's cross-claim for insurance coverage is denied.

The branch of PPE's motion seeking to dismiss claims for common-law indemnification against Viacom and NGPI is granted. PPE argues that they are entitled to summary judgment to dismiss claims for common-law indemnification because Viacom's claim is barred the Workers Compensation Law ("WCL"). WCL Section 11 allows a third-party common-law indemnification claim to be brought against an employer only "where the injured worker has suffered a 'grave injury' or the employer has entered into a written contract to indemnify the [party]." Flores v Lower E Side Serv Ctr, 4 NY3d 363, 365 [2005]; NYSCEF Doc. No. 225. The parties have not presented evidence that plaintiff suffered a grave injury as defined under WCL Section 11, and, therefore, PPE's cross-motion for dismissal on the common-law indemnification claim is granted. However, the Service Agreement between PPE and NGPI constitutes a written contract with the intent to indemnify, so the branch of the motion seeking to dismiss contractual indemnification is denied.

All remaining requests for summary judgment are denied. Factual issues remain in this action, and, therefore, a jury will have to resolve the allocation of liability among the defendants and related indemnification claims.

Accordingly, it is hereby,

ORDERED that Pier Productions & Entertainment LLC's cross-motion for summary judgment to dismiss Viacom's and NGPI's cross-claims for insurance coverage is granted, and it is further,

ORDERED that Pier Productions & Entertainment LLC’s cross-motion for summary judgment to dismiss Viacom’s and NGPI’s cross-claims for common-law indemnification is granted, and it is further

ORDERED that all remaining requests for relief are denied.

This constitutes the decision and order of the Court.

8/14/2024

DATE



James d'Auguste, 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