

**Board of Mgrs. of the 432 Park Condominium v 56th
& Park (NY) Owner, LLC**

2024 NY Slip Op 33853(U)

October 28, 2024

Supreme Court, New York County

Docket Number: Index No. 655617/2001

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

-----X

BOARD OF MANAGERS OF THE 432 PARK
CONDOMINIUM, ON BEHALF OF THE INDIVIDUAL UNIT
OWNERS AND THE COMMERCIAL UNIT OWNERS,
BOARD OF MANAGERS OF THE COMMERCIAL
SECTION OF THE 432 PARK CONDOMINIUM, BOARD OF
MANAGERS OF THE RESIDENTIAL SECTION OF THE
432 PARK CONDOMINIUM, ON BEHALF OF THE
INDIVIDUAL UNIT OWNERS,

Plaintiff,

- v -

56TH AND PARK (NY) OWNER, LLC,RYAN HARTER,
HARRY MACKLOWE,

Defendant.

-----X

56TH AND PARK (NY) OWNER, LLC

Plaintiff,

-against-

LEND LEASE (US) CONSTRUCTION LMB INC., SLCE
ARCHITECTS LLP, WSP USA BUILDINGS, INC. F/K/A, WSP
USA BUILDINGS, INC. F/K/A WSP CANTOR SEINUK
STRUCTURAL ENGINEERS, CGI NORTHEAST INC, ROWAN
DAVIES, IRWIN, INC., JENKINS AND HUNTINGTON, INC.,
VDA, INC.

Defendant.

-----X

HARRY MACKLOWE

Plaintiff,

-against-

432 PARK PROPERTIES INC.

Defendant.

-----X

INDEX NO. 655617/2021
MOTION DATE N/A
MOTION SEQ. NO. 022

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595204/2022

Second Third-Party
Index No. 595923/2022

LEND LEASE (US) CONSTRUCTION LMB INC.

Third Third-Party
Index No. 595956/2022

Plaintiff,

-against-

RAEL AUTOMATIC SPRINKLER COMPANY, INC., ASM MECHANICAL SYSTEMS, A.S.R. ELECTRICAL CONTRACTING, INC., CELTIC SHEETMETAL, INC., COMPONENT ASSEMBLY SYSTEMS, INC., IDA EXTERIOR SYSTEMS, LLC, L.I.F. INDUSTRIES, INC., MAYRICH CONSTRUCTION CORP., PARAMOUNT PLUMBING CO. OF NY, INC., ROGER & SONS CONCRETE, INC., NICHOLAS & GALLOWAY, INC., A&H CUSTOM MACHINE LTD., TAYLOR DEVICES, INC., METROPOLITAN WALTERS, LLC, SCHINDLER ELEVATOR CORPORATION, JOHN DOES

Defendant.

-----X

CELTIC SHEETMETAL, INC.

Fourth Third-Party
Index No. 595257/2023

Plaintiff,

-against-

INTERNATIONAL ASBESTOS REMOVAL, INC. F/K/A JOHN GRANDO, INC., PREMIER INSULATION SERVICES CORP., PRECISION TEST AND BALANCE OF NY CORP.

Defendant.

-----X

MAYRICH CONSTRUCTION CORP.

Fifth Third-Party
Index No. 595301/2023

Plaintiff,

-against-

STARBRITE WATERPROOFING CO. INC., CIVETTA- COUSINS JV, L.L.C.

Defendant.

-----X

ROGER & SONS CONCRETE, INC.

Sixth Third-Party
Index No. 595305/2023

Plaintiff,

-against-

FERRARA BROS. BUILDING MATERIALS CORP., DOKA USA LTD., RETECH SYSTEMS LLC, STARBRITE

WATERPROOFING CO., INC., DYWIDAG-SYSTEMS
INTERNATIONAL, USA, INC., FALCON STEEL COMPANY,
INC., HILTI, INC., FERRARA BROS. LLC, SMYRNA READY
MIX CONCRETE LLC, SRM CONCRETE LLC, NUCOR
HARRIS REBAR NORTHEAST LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 022) 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

The court denies defendant Macklowe's motion for summary judgment made before the close of discovery. The court also denies plaintiff's cross motion for summary judgment.

There are issues of fact about whether Macklowe abused his control over the commercial board or participated in its misconduct (1) to circumvent the mandatory approval process for engaging in sensitive electrical work; (2) divert work to his own companies and to an inexperienced sub contractor; (3) directed the inexperienced sub to perform its work in reckless manner to cut costs that caused the arc explosion and (4) foisted the insurance onto plaintiffs by abusing his position at the board to excuse his own companies from using their insurance to cover the significant damage that the Macklowe controlled subcontractor caused. The cross motion to dismiss Macklowe's claims for indemnification must be denied because, if Macklowe's view of events bears out at trial, he could be entitled to indemnification.

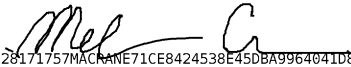
Having moved for summary judgment prematurely, and despite being warned, Macklowe has now squandered his opportunity for summary judgment post-note. Plaintiff likewise is now precluded from moving again on this issue. (*Strout v. CFE 88 LLC*, No. 161439/19, 2024 WL

4350564, at *1 [1st Dep't Oct. 1, 2024][“successive motions for summary judgment should be denied absent new evidence”]).

Accordingly, it is

ORDERED THAT both the motion and the cross motion are denied; and it is further

ORDERED THAT **there shall be no further motion practice whatsoever, including motions to reargue, without prior conference with the court.**


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<u>10/28/2024</u> DATE					<hr/> MELISSA A. CRANE, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE