

Aguirre v 635 Madison Fee Prop. Owner LLC
2025 NY Slip Op 30039(U)
January 7, 2025
Supreme Court, New York County
Docket Number: Index No. 151111/2021
Judge: Mary V. Rosado
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

-----X

JEAN AGUIRRE,

Plaintiff,

- v -

635 MADISON FEE PROPERTY OWNER LLC,TECTONIC BUILDERS INC.,BRONXDALE ELECTRIC INC.,IRONWOOD REALTY CORPORATION, RICHEMONT NORTH AMERICA, INC.,MONTBLANC,

Defendant.

-----X

RICHEMONT NORTH AMERICA, INC. and MONTBLANC

Plaintiffs,

- v -

TECTONIC BUILDERS INC.

Defendant.

-----X

TECTONIC BUILDERS INC.

Plaintiff,

-against-

PRACTICAL PLUMBING AND HEATING INC.

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party
Index No. 154132/2021

Second Third-Party
Index No. 595529/2021

The following e-filed documents, listed by NYSCEF document number (Motion 007) 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 401, 402, 403, 404, 405, 406, 407, 408, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date August 12, 2024, Second Third-Party Defendant Practical Plumbing and Heating Inc.’s (“Practical”) motion for summary judgment is granted in part and denied in part.

For a more thorough recitation of the facts, the reader is referred to the Court's Decision and Order on Motion Sequence 003. Here, Practical seeks summary judgment on multiple grounds against multiple parties.¹

First, Practical seeks summary judgment dismissing all claims and crossclaims asserted against it pursuant to Workers' Compensation Law § 11. This portion of the motion is denied for the reasons stated in Motion Sequence 002. Just as in Motion Sequence 002, here there are triable issues of fact as to whether Plaintiff Jean Aguirre's ("Plaintiff") traumatic brain injury has led to his permanent and total disability.

Second, Practical seeks summary judgment dismissing Bronxdale Electric, Inc.'s ("Bronxdale") claim for contractual indemnification as there exists no contract between the parties. This portion of the motion is granted as there is no contract between Bronxdale and Practical.

Third, Practical seeks summary judgment dismissing 635 Madison Fee Property Owner, LLC, Ironwood Realty Corporation, Richemont North America, Inc., and Montblanc's claims for contractual indemnification. This portion of the motion is denied as the Court has already found in motion sequence 002 that these parties are entitled to contractual indemnification from Practical.

Fourth, Practical seeks dismissal of Tectonic Builders Inc.'s ("Tectonic") claim for contractual indemnification. For the same reasons stated in motion sequence 004, this portion of the motion is denied. Just as in motion sequence 004, here there are triable issues of fact as to both Tectonic's and Practical's negligence which makes ruling on the contractual indemnification claim premature (*York v Tappan Zee Constructors, LLC*, 224 AD3d 527, 529 [1st Dept 2024]; *Bradley*

¹ Second Third-Party Defendant Tectonic Builders Inc. opposes the motion based on its timeliness. However, in the interest of deciding the case on the merits, and pursuant to CPLR 2004, the Court elects to hear the motion. In any event, most if not all of the issues presented in this motion have already been litigated and decided in the parties' numerous other motions and cross-motions for summary judgment.

v NYU Langone Hospitals, 223 AD3d 509, 511-512 [1st Dept 2024]; *Spielmann v 170 Broadway NYC LP*, 187 AD3d 492 [1st Dept 2020]).

Finally, Practical seeks spoliation sanctions against Tectonic for its destruction of the ladder which caused Plaintiff's injury. The Court is granted broad discretion in determining spoliation sanctions, but the sanction must reflect an appropriate balancing under the circumstances (*Arbor Realty funding, LLC v Herrick Feinstein LLP*, 140 AD3d 607 [1st Dept 2016]). A motion court, may, in its discretion, defer to a trial court a determination of "whether or what sanction to impose" (*AIG Property Casualty Co. v MTS Power Systems*, 231 AD3d 591 [1st Dept 2024] quoting *Butler v New York City Tr. Auth.*, 192 AD3d 623, 624 [1st Dept 2021]).

Here, the Court denies Practical's motion for spoliation sanctions without prejudice, with leave to renew at the time of trial. The trial court, assessing the evidence and witnesses before it, is better situated to determine the relevance of the allegedly spoliated evidence, and the culpability of the allegedly spoliating party (*see also Quinn v City University of New York*, 43 AD3d 679, 680 [1st Dept 2007]).

Accordingly, it is hereby,

ORDERED that Second Third-Party Defendant Practical Plumbing and Heating Inc.'s motion is granted in part and denied in part; and it is further

ORDERED that Second Third-Party Defendant Practical Plumbing and Heating Inc.'s motion for summary judgment dismissing Defendant Bronxdale Electric Inc.'s motion seeking dismissal of Bronxdale Electric Inc.'s motion for contractual indemnification is granted; and it is further

ORDERED that Second Third-Party Defendant Practical Plumbing and Heating Inc.'s motion for spoliation sanctions against Defendant/Third-Party Defendant/Second Third-Party

Plaintiff Tectonic Builders Inc.’s is denied, without prejudice, with leave to renew at the time of trial, and it is further

ORDERED that Second Third-Party Defendant Practical Plumbing and Heating Inc.’s motion seeking dismissal of all claims and crossclaims asserted against it pursuant to Workers’ Compensation Law § 11 is denied; and it is further

ORDERED that Second Third-Party Defendant Practical Plumbing and Heating Inc.’s motion seeking dismissal 635 Madison Fee Property Owner, LLC, Ironwood Realty Corporation, Richemont North America, Inc., and Montblanc’s claims for contractual indemnification is denied; and it is further

ORDERED Second Third-Party Defendant Practical Plumbing and Heating Inc.’s motion seeking dismissal of Defendant/Third-Party Defendant/Second Third-Party Plaintiff Tectonic Builders Inc.’s claim for contractual indemnification is denied; and it is further

ORDERED that within ten days of entry, counsel for Second Third-Party Defendant Practical Plumbing and Heating Inc.’s shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>1/7/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" 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