

75 First Ave. Club LLC v United Glass Sys. Corp.

2025 NY Slip Op 31126(U)

April 3, 2025

Supreme Court, New York County

Docket Number: Index No. 652658/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

-----X

75 FIRST AVENUE CLUB LLC,

Plaintiff,

INDEX NO. 652658/2022

MOTION DATE N/A

MOTION SEQ. NO. 008

- v -

UNITED GLASS SYSTEMS CORP., UNITED GLASS
SYSTEMS, METAL YAPI INC., METAL YAPI USA CORP.,
METAL YAPI NORTH AMERICA, LLC, O'KEEFE'S, INC.
(D/B/A SAFTI FIRST), UNITED GLASS-METAL YAPI, A
JOINT VENTURE,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

METAL YAPI INC., METAL YAPI USA CORP., METAL YAPI
NORTH AMERICA, LLC

Third-Party
Index No. 595739/2023

Plaintiffs,

-against-

PIZZAROTTI IBC LLC, WONDER WORKS CONSTRUCTION
CORP.

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 199, 200, 201, 202, 203, 204, 205, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235

were read on this motion to/for DISMISS.

Defendant O'Keefe's, Inc. ("Moving Defendant")'s motion to dismiss the crossclaim of

Metal Yapi Inc., Metal Yapi USA Corp., and Metal Yapi North America, LLC (collectively the

"Metal Yapi Defendants") is granted.

Background

This case arises out of a contractual dispute after faulty glass panels were installed in a residential building owned by plaintiff. After installation, the glass became distorted and allegedly looked like a "fun house."

Moving Defendant contends that the Metal Yapi Defendants' crossclaim against it for common law indemnification is barred under binding appellate caselaw. It contends that the complaint does not allege any action or inaction against Moving Defendant and, therefore, there cannot be any vicarious liability against Moving Defendant should the Metal Yapi Defendants be found liable to plaintiff. Moving Defendant also emphasizes that the complaint was previously dismissed against it and so a crossclaim cannot lie against it.

The Metal Yapi Defendants blame the Moving Defendant for gross negligence in supplying a defective piece of glass to the condominium. They claim that because of "procedural oversights" by plaintiff, Moving Defendant has avoided any responsibility. The Metal Yapi Defendants contend that it would be premature to dispose of the indemnification claims because the parties have not yet completed discovery. They emphasize that there were 168 defective panels supplied by the Moving Defendant who later replaced these panels, which they claim is an acknowledgement of the Moving Defendant's liability. The Metal Yapi Defendants claim they don't dispute the law cited by the Moving Defendant but do dispute the allegations in the complaint.

In reply, the Moving Defendant maintains that a common law indemnification claim only arises where the complaint alleges that the indemnitee is vicariously liable and no such vicarious relationship is alleged in the complaint or in the crossclaim. It argues that the only allegations alleged by plaintiff against the Metal Yapi Defendants in the complaint deal with warranty and contractual obligations.

Discussion

"Common-law indemnification may be pursued by parties who have been held vicariously liable for the party that actually caused the negligence that injured the plaintiff"

(*Chatham Towers, Inc. v Castle Restoration & Const., Inc.*, 151 AD3d 419, 420 [1st Dept 2017]). As the Moving Defendant points out, plaintiff's claims against it were dismissed (NYSCEF Doc. No. 114). And plaintiff's causes of action against the Metal Yapi Defendants concern breaches of warranties and breaches of contract. That compels the Court to dismiss the crossclaim for common law indemnification. "Indemnification also does not lie in this case because plaintiff has brought direct claims against the codefendants for breach of contract Accordingly, since liability against any of these defendants would be based upon such defendant's own participation in the acts giving rise to the loss, that is, as an actual wrongdoer, these defendants are precluded from recovery . . . on the basis of common-law indemnity" (*Trump Vil. Section 3, Inc. v New York State Hous. Fin. Agency*, 307 AD2d 891, 896, 764 NYS2d 17 [1st Dept 2003] [internal quotations and citations omitted]).

In other words, if the Metal Yapi Defendants are found to have breached the contract and warranties, then they would be barred from then seeking common law indemnification. "Common-law indemnification is predicated on vicarious liability without actual fault, which necessitates that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine" (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 367, 807 NYS2d 353 [1st Dept 2006] [internal quotations and citations omitted]). If they are found not liable, then there is no reason for the crossclaim.

The Metal Yapi Defendants do not directly contest the Moving Defendant's arguments about vicarious liability. Instead, they ask the Court to take an expansive view of plaintiff's complaint to find that plaintiff actually did raise allegations against the Moving Defendant. Unfortunately, that argument is not a basis to ignore the binding caselaw cited by the Moving Defendant. The Metal Yapi Defendants' other arguments concern its opposition to plaintiff's

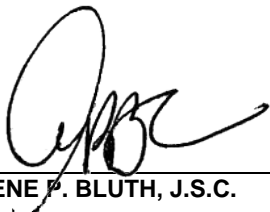
claims—that is not relevant here where the issue in dispute is a crossclaim between defendants. The instant motion is not the appropriate place to contest plaintiff’s causes of action.

To the extent that the Metal Yapi Defendants seek leave to amend, that request is denied as they did not cross-move for such relief.

Accordingly, it is hereby

ORDERED that defendant O’Keefe’s, Inc. (“Moving Defendant”)’s motion to dismiss the crossclaim of Metal Yapi Inc., Metal Yapi USA Corp., and Metal Yapi North America, LLC is granted.

See NYSCEF Doc. No. 195 concerning the next conference.

<u>4/3/2025</u> DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<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