

**Calegari v Rinaldi Group, LLC**

2025 NY Slip Op 31681(U)

May 2, 2025

Supreme Court, New York County

Docket Number: Index No. 150671/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 150671/2021

SILVERIO ROCHA CALEGARI,

MOTION DATE 05/31/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE RINALDI GROUP, LLC, 106 WEST 56TH STREET
PROPERTY INVESTORS III, LLC,

DECISION + ORDER ON MOTION

Defendant.

-----X

THE RINALDI GROUP, LLC

Third-Party
Index No. 595507/2021

Plaintiff,

-against-

MDB DEVELOPMENT CORP.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 74, 75, 76, 77, 79, 80, 86, 87

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

Upon the foregoing documents, and after oral argument, which took place on February 25, 2025, where Julio Cesar Roman, Esq. appeared for Plaintiff Silverio Rocha Calegari ("Plaintiff"), Dennis S. Heffernan, Esq. appeared for Defendants The Rinaldi Group, LLC ("Rinaldi"), and 106 West 56th Street Property Investors III, LLC ("106 West 56th Street"), and Carl A. Formicola, Esq. appeared for Third-Party Defendant MDB Development Corp., Rinaldi's motion for summary judgment on its Third-Party Contractual indemnification and failure to procure insurance claims against MDB Development Corp. is granted in part and denied in part. Although 106 West 56th Street also moved for summary judgment on these claims, the third-party complaint reflects that

106 West 56<sup>th</sup> Street is not a third-party plaintiff and has not asserted any claims against MDB Development Corp. therefore 106 West 56<sup>th</sup> Street's motion is denied.

### **I. Background**

On December 2, 2020, Plaintiff was employed by MDB Development Corp. as a mason placing stucco at a construction site at 106 West 56<sup>th</sup> Street, New York, New York (the "Site") (NYSCEF Doc. 65 at 32; 35). Defendant 106 West 56<sup>th</sup> owned the Site, while Rinaldi was the general contractor and MDB Development Corp. was a subcontractor (NYSCEF Doc. 68 at 24-25). Plaintiff moved materials back and forth from sidewalk bridge to the second floor using a makeshift wooden ladder (NYSCEF Doc. 65 at 47-48). Plaintiff was ascending the ladder when the ladder, which he testified was unsecured, moved and Plaintiff fell (*Id.* at 57). Plaintiff's supervisor, Nicholas Fiorello, testified the ladder was the only way to access the second floor and that it was provided by Rinaldi (NYSCEF Doc. 71 at 32). Mr. Fiorello could not recall whether the ladder was properly secured on the date of Plaintiff's accident (*Id.* at 28) and he testified that because the ladder was provided by Rinaldi, MDB Development Corp. did not inspect it (*Id.* at 50). An incident report authored by Mr. Fiorello stated that Plaintiff slipped on the ladder, however Mr. Fiorello could not remember the source of this information and he personally did not observe Plaintiff fall (*Id.* at 71-72). In this motion, Rinaldi requests summary judgment on its third-party contractual indemnification and failure to procure insurance claims against MDB Development Corp.

### **II. Discussion**

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and

on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Rinaldi’s motion for summary judgment on its third-party claims for contractual indemnification is conditionally granted upon a finding of negligence against MDB Development Corp. There is no dispute as to the existence of an agreement to indemnify between Rinaldi and MDB Development Corp. (*see* NYSCEF Doc. 57). The specific indemnification clause, found in § 12.2, reads:

“[MDB] shall, to the fullest extent permitted by law and at its own cost and expense, indemnify and defend [Rinaldi]...and save them harmless from and against any and all claims, damages, losses, liabilities, suits, judgments, actions and all expenses (including attorneys fees and disbursements) arising out of any act, error or omission or breach of the Trade Contract...by [MDB] or any of its lower-tier trade contractors or suppliers of any tier in connection with the performance of the Work hereunder or otherwise arising out of, in connection with or as a consequence of the performance of the Work hereunder; provided that nothing herein shall require [MDB] to indemnify or hold harmless Indemnitees hereunder to the extent such claim is caused by the negligence of such Indemnitees.

The other indemnification clause Rinaldi relies on, found in ¶ 4 of Exhibit C to NYSCEF Doc. 57, reads:

“To the fullest extent permitted by law, [MDB] shall defend, indemnify and hold harmless [Rinaldi]...from and against any and all claims, losses, costs, injuries, damages and expenses, including reasonable attorneys’ fees brought or assumed against any of the Indemnitees by any person or firm, arising out of or in connection with or as a result of or consequence of the performance of the Work of [MDB] under this Trade Contract, or any additional work, extra work, or add-on work, but only to the extent contributed to by the acts or omissions of [MDB] or any person or entity employed, either directly or indirectly, by [MDB]...this indemnification agreement applies and shall be enforceable except to the extent such claim is caused by a party indemnified hereunder.”

The indemnification clauses are clear and unambiguous and must be enforced according to their plain meaning. It is undisputed Plaintiff was an employee of MDB Development Corp. and was injured while working for MDB Development Corp., therefore the indemnification clauses are triggered. Therefore, Rinaldi is entitled to contractual indemnification from MDB Development Corp. conditioned on a finding of negligence against MDB Development Corp. (*see Hartrum v Montefiore Hospital Housing Section II Inc.*, 2025 N.Y. Slip Op. 02008 at \*2 [1st Dept 2025]).

Because there is not yet a finding of negligence against MDB Development Corp., and there remain issues of fact as to whether Rinaldi may also be found negligent, Rinaldi is not entitled to an unconditional grant of summary judgment on its contractual indemnification claim (*Agard v Port Auth. of N.Y. and N.J.*, 227 AD3d 404, 405 [1st Dept 2024]; *Travalja v 135 West 52<sup>nd</sup> Street Owner LLC*, 232 AD3d 503, 505 [1st Dept 2024]). Specifically, there is testimony that the makeshift ladder which caused Plaintiff's injury was supplied by Rinaldi, and that Rinaldi's site safety supervisor was responsible for inspecting ladders to ensure they were properly secured. As the indemnification clauses clearly state, Rinaldi is only entitled to indemnification to the extent MDB Development Corp. is found negligent. Therefore, the grant of summary judgment is conditioned on a finding of negligence against MDB Development Corp.

Rinaldi's motion for summary judgment on its claim for breach of contract for failure to procure insurance is denied. A party moving for summary judgment for failure to procure insurance must show correspondence from the insurer of the party against whom summary judgment is sought indicating that the moving party was not named as an insured on any policies issued (*Dorset v 285 Madison Owner LLC*, 214 AD3d 402 [1st Dept 2023]).

Rinaldi has not met its burden. It failed to annex any of the applicable insurance policies or communications from insurers declining coverage, there is only annexed a tender letter (NYSCEF Doc. 58).

Accordingly, it is hereby,

ORDERED that The Rinaldi Group, LLC and 106 West 56<sup>th</sup> Street Property Investors III, LLC’s motion for summary judgment against Third-Party Defendant MDB Development Corp. is granted in part and denied in part; and it is further

ORDERED that the motion is granted solely to the extent that The Rinaldi Group, LLC is granted summary judgment on its third-party claim for contractual indemnification against Third-Party Defendant MDB Development Corp. conditioned on a finding of negligence by the trier of fact against Third-Party Defendant MDB Development Corp.; and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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>5/2/2025</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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE