

Regalado v QPS 23-10 Dev. LLC

2025 NY Slip Op 32343(U)

June 5, 2025

Supreme Court, New York County

Docket Number: Index No. 151360/2018

Judge: James G. Clynes

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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. JAMES G. CLYNES
Justice

PART 23M

-----X
MARCO REGALADO,

Plaintiff,

-against-

QPS 23-10 DEVELOPMENT LLC, QPS 23-10 DEVELOPER
LLC,

Defendants.

INDEX NO. 151360/2018
MOTION DATE N/A
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

-----X
QPS 23-10 DEVELOPMENT LLC, QPS 23-10 DEVELOPER
LLC,

Third-Party Plaintiffs,

Third-Party
Index No. 595622/2018

-against-

ALPHA OMEGA BUILDING CORP., ALPHA OMEGA
BUILDING CONSULTING CORP., ALPHA OMEGA
CONCRETE CORP.,

Third-Party Defendants.

-----X
QPS 23-10 DEVELOPMENT LLC, QPS 23-10 DEVELOPER
LLC,

Second Third-Party Plaintiffs,

Second Third-Party
Index No. 595595/2019

-against-

GENERAL CASUALTY COMPANY OF WISCONSIN,

Second Third-Party Defendant.
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 98, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 120, 121, 122, 147, 149

were read on this motion for SUMMARY JUDGMENT.

In this Labor Law action, second third-party defendant General Casualty Company of Wisconsin (General Casualty) moves, pursuant to CPLR 3212, for summary judgment on its second and third affirmative defenses and for summary judgment dismissing the second third-party complaint. In addition, General Casualty moves for summary judgment as to liability on its counterclaim for contractual indemnification. General Casualty also seeks summary judgment dismissing the affirmative defenses asserted in the reply to its counterclaim.

Defendants/third-party plaintiffs/second third-party plaintiffs QPS 23-10 Development LLC (QPS Development) and QPS 23-10 Developer LLC (QPS Developer) cross-move, pursuant to CPLR 3212, for: (1) conditional contractual indemnification, including past and future attorneys' fees incurred in the defense of this action and in pursuit of indemnification, against General Casualty; (2) summary judgment on their breach of contract claim against General Casualty; and (3) summary judgment dismissing General Casualty's counterclaim and cross-claims.¹ QPS Development and QPS Developer also request sanctions, attorneys' fees, and costs pursuant to 22 NYCRR 130-1.1.

BACKGROUND

Plaintiff Marco Regalado alleges that, on July 2, 2015, he was injured while performing construction work on a construction project located at 23-01 42nd Road, Queens, New York (NY St Cts Elec Filing [NYSCEF] Doc No. 1, verified complaint ¶¶ 30-34). QPS Development admitted that it was the owner of the building under construction (NYSCEF Doc No. 3, verified answer ¶ 8). On May 22, 2014, QPS Developer entered into a contract with nonparty New Millennium Structures, LLC (New Millennium) (the original contract) to furnish and install concrete and related materials on the project (NYSCEF Doc No. 106, Maloney aff, exhibit F).

¹ QPS Development and QPS Developer make no arguments as to why the cross-claims should be dismissed.

Pursuant to the original contract, New Millennium agreed to defend and indemnify QPS Developer and QPS Development (*id.*).

In October 2014, QPS Developer assigned all of its rights, title, and interest in the original contract to QPS Development (*id.*, exhibit G).

General Casualty issued a performance bond for the project (NYSCEF Doc No. 82). New Millennium and General Casualty agreed to “jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to [QPS Development] for the performance of the [original contract], which is incorporated herein by reference” (*id.* § 1).

By letters dated June 8, 2015 and June 12, 2015, QPS Development declared New Millennium in default and terminated New Millennium under the original contract (NYSCEF Doc No. 102).

On June 25, 2015, QPS Development and General Casualty entered into a surety takeover agreement, pursuant to which General Casualty undertook “to cause the performance of each and every one of the terms, covenants and conditions of the [original contract]” (NYSCEF Doc No. 92, Maloney aff, exhibit H § 5).

On the same day, General Casualty and Alpha/Omega Building Corp. entered into a short-term interim agreement to perform specified concrete work (NYSCEF Doc No. 107). In August 2015, General Casualty also entered into a completion contract with Alpha/Omega Concrete Corp. to complete the concrete work on the project (NYSCEF Doc No. 92, Maloney aff, exhibit I).

On January 23, 2016, QPS Development submitted a claim to General Casualty for damages relating to New Millennium’s default under the original contract in the sum of \$12,580,506.56 (NYSCEF Doc No. 92, Maloney aff, exhibit T). QPS Development and General

Casualty settled that claim under a settlement agreement and release dated September 27, 2016 and a related assignment of completion contract effective September 27, 2016 (NYSCEF Doc No. 108). The settlement agreement provides as follows:

“Within 30 days of the date of execution hereof, Surety shall pay to QPS the sum of \$2,910,653.60 (the ‘Settlement Agreement’) in full and complete satisfaction of the Claim and Surety’s obligations to QPS and DBNY with respect to the contract, the Performance Bond, the Rider and/or the Takeover Agreement, except that Surety’s obligations, if any, under Article 16 of the Contract for correction of latent defects in the work performed by [New Millennium], which defects are currently unknown to QPS and/or which could not have been reasonably known by QPS by reasonable inspection, shall survive (*id.*, ¶ 2). . . .

“Pursuant to the terms of a separate Assignment of Completion Contract, annexed hereto as Exhibit ‘B’, (the ‘Assignment’), Surety assigns to QPS the Completion Contract and shall have no further liability thereunder (*id.*, ¶ 4). . . .

“QPS [Development] shall defend, indemnify and hold harmless Surety from, against and with respect to (i) any and all obligations and/or liabilities that Surety may now have or hereafter have or be subject to arising out of, under and/or relating to the Contract, the Performance Bond, the Rider, and/or the Takeover Agreement and/or (ii) any and all claims of third parties whose claims are part of the Claim and/or reflected in the Claim Log. Nothing contained herein shall be deemed to require QPS to defend, indemnify and hold harmless Surety from any of its obligations (i) to third parties under the Payment Bond, and/or (ii) to third party consultants and/or contractors retained directly by Surety in connection with QPS’s claim against the Performance Bond, except to the extent that such claims of third parties are part of QPS’s Claim and/or reflected in the Claim Log (*id.*, ¶ 5).

“Except as specifically provided in this Agreement, [QPS Development] and DBNY shall have no further claims with respect to the Performance Bond, the Rider and the Takeover Agreement (*id.*, ¶ 6).

“QPS and [Deutsche Bank AG New York] DBNY hereby release, relinquish, acquit, waive and forever Surety and Surety’s parents, subsidiaries and affiliated entities, including, but not limited to QBE Inc. d/b/a QBENA, and their respective officers, agents, employees and representatives from any and all claims, rights, demands, actions or causes of action, known or unknown, asserted or unasserted, of any kind or nature which QPS and/or DBNY now have, could have or hereafter may have, arising out of or relating to the Contract, the Performance Bond, the Rider, the Takeover Agreement, the Claim and/or the work performed by or on behalf of Surety under the Takeover Agreement. This release does not include . . . (ii) any claims by third parties for personal injury for which Surety is liable

occurring prior to the date of execution of this Agreement and occurring on the Project” (*id.*, ¶ 8).

As relevant here, plaintiff commenced this action against QPS Development and QPS Developer, seeking to recover for Labor Law violations and for common-law negligence (NYSCEF Doc No. 84).

QPS Development and QPS Developer then commenced a third-party action against Alpha Omega Building Corp., Alpha Omega Building Consulting Corp., and Alpha Omega Concrete Corp. (NYSCEF Doc No. 86).

On July 12, 2019, QPS Development and QPS Developer commenced a second third-party action against General Casualty, asserting claims for: (1) contribution; (2) common-law indemnification; (3) contractual indemnification; and (4) breach of contract for failure to procure insurance (NYSCEF Doc No. 88). In its answer to the second third-party complaint, General Casualty’s second affirmative defense asserts that QPS Developer does not have any rights under the original contract or the performance bond (NYSCEF Doc No. 89). In addition, General Casualty asserted a third affirmative defense and counterclaim for contractual indemnification against QPS Development (*id.*).

DISCUSSION

It is well established that “[t]he proponent of summary judgment must establish its defense or cause of action sufficiently to warrant a court’s directing judgment in its favor as a matter of law” (*Ryan v Trustees of Columbia Univ. in the City of N.Y., Inc.*, 96 AD3d 551, 553 [1st Dept 2012] [internal quotation marks and citation omitted]). “Thus, the movant bears the burden to dispel any question of fact that would preclude summary judgment” (*id.*). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial

for resolution” (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to raise an issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

General Casualty’s Motion for Summary Judgment/QPS Development and QPS Developer’s Request for Contractual Indemnification

General Casualty moves for summary judgment dismissing the second third-party complaint and for summary judgment on its counterclaim for contractual indemnification. General Casualty argues that the second third-party claims were expressly extinguished by the language of the settlement agreement. General Casualty contends that ~~the~~ none of the carve-outs in the release apply. Specifically, General Casualty asserts that the language “any claims by third parties for personal injury for which [General Casualty] is liable occurring prior to the date of execution of this Agreement and occurring on the Project” (NYSCEF Doc No. 108 ¶ 8) means only those claims asserted by its construction consultant, Cashin Spinelli & Ferretti, and any other contractor directly retained by General Casualty. General Casualty maintains that QPS Development is obligated to defend and indemnify it for all claims relating to the project pursuant to paragraph 5 of the settlement agreement. According to General Casualty, “there are no third-party claims against [it] here” (NYSCEF Doc No. 93 at 13), and it would not be liable to plaintiff as a completing surety. Thus, General Casualty claims that any argument that the second third-party claims were not released is utterly illogical and must fail.

In support of its argument, General Casualty submits an affirmation from Steven S. Katz, Esq. (Katz), who drafted the settlement agreement on its behalf (NYSCEF Doc No. 81, Katz affirmation, ¶ 1). Katz explains that the settlement agreement contains language, which was added by QPS Development’s then-counsel, to “carve out” from the release “any claims by third parties for personal injury for which Surety is liable occurring prior to the date of execution of

this Agreement and occurring on the Project” (*id.*, ¶ 19). Katz states that he recalls that this language “was added to address potential claims by employees of Cashin Spinelli & Ferretti (“CSF”), the consultant that [General Casualty] retained to be its representative on the Project site, consistent with paragraph 5 of the Settlement Agreement (which specifically carved out claims of consultants retained by [General Casualty] from QPS’s obligation to defend and indemnify [General Casualty]” (*id.*, ¶ 20). Finally, General Casualty also seeks summary judgment dismissing QPS Development and QPS Developer’s affirmative defenses.

QPS Development and QPS Developer move for summary judgment in their favor on their contractual indemnification claim against General Casualty, arguing that plaintiff’s accident arose out of the performance of General Casualty’s contractor’s work. They contend that there is no dispute that plaintiff was injured while working for Alpha/Omega Building Corp., General Casualty’s contractor. QPS Development and QPS Developer request conditional contractual indemnification pending a determination of their negligence, and reimbursement of past and future attorneys’ fees and costs. QPS Development and QPS Developer maintain that the court should enforce the unambiguous language of the settlement agreement. Under the settlement agreement, QPS Development never released any claims for contractual indemnification of personal injury claims that occurred prior to the execution of the settlement agreement. QPS Development and QPS Developer further contend that it would not make sense that QPS Development agreed to indemnify General Casualty for the very occurrence that General Casualty agreed to indemnify QPS Development. They argue that the court should not consider the parol evidence submitted by General Casualty because the language is unambiguous.

QPS Development and QPS Developer further contend that, even if the court considers the parol evidence submitted by General Casualty, they are still entitled to summary judgment.

In support of this argument, QPS Development and QPS Developer submit an affirmation from Calvin Kamien, Esq. (Kamien), who drafted the settlement agreement on behalf of QPS Development and QPS Developer, indicating that the carve-out language was added to cover the precise type of claim asserted by plaintiff in this action (NYSCEF Doc No. 110, Kamien affirmation, ¶¶ 6-14).

In reply, General Casualty insists that it is entitled to summary judgment solely based upon the language of the settlement agreement. General Casualty contends that the parol evidence it submitted was intended to give the court background information. Essentially, General Casualty asserts that QPS Development and QPS Developer ask the court to view one sentence in a vacuum, and ignore the remainder of the settlement agreement. General Casualty points out that the words “indemnity” and “insurance” do not appear anywhere in the carve-out.

“[A] general release is governed by principles of contract law” (*Gyabaah v Rivlab Transp. Corp.*, 102 AD3d 451, 451 [1st Dept 2013], *affd* 22 NY3d 1018 [2013] [internal quotation marks and citation omitted]). “A release may not be read to cover matters which the parties did not desire or intend to dispose of” (*Stolper v Burbaki*, 200 AD3d 480, 481 [1st Dept 2021]). “Where the language in a release is clear and free from ambiguity, effect must be given to the intent of the parties as reflected in the writing alone, without resort to extrinsic evidence” (*Matter of Jacker*, 105 AD3d 1048, 1048 [2d Dept 2016], *lv denied* 21 NY3d 862 [2013]; *see also W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]). “Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing” (*Donohue v Cuomo*, 38 NY3d 1, 12-13 [2022], quoting *W.W.W. Assoc.*, 77 NY2d at 162; *see also Broyhill Furniture Indus., Inc. v Hudson Furniture Galleries, LLC*, 61 AD3d 554, 555 [1st Dept 2009]). Further, “[t]hat one party to the

agreement may attach a particular, subjective meaning to a term that differs from the term's plain meaning does not render the term ambiguous" (*Slattery Skanska Inc v American Home Assur. Co.*, 67 AD3d 1, 14 [1st Dept 2009] [internal quotation marks and citation omitted]).

Moreover, "the rules of construction of contracts require [the courts] to adopt an interpretation which gives meaning to every provision of a contract or, in the negative, no provision of a contract should be left without force and effect" (*Muzak Corp. v Hotel Taft Corp.*, 1 NY2d 42, 46 [1956]; see also *Gessin Elec. Contrs., Inc. v 95 Wall Assoc., LLC*, 74 AD3d 516, 518 [1st Dept 2010] ["courts should construe a contract in a manner that avoids inconsistencies and reasonably harmonizes its terms"]). "Where there is an inconsistency between a specific provision and a general provision of a contract, the specific provision controls" (*Cronos Group Ltd. v XComIP, LLC*, 156 AD3d 54, 61 [1st Dept 2017]).

Recently, the Second Department rejected General Casualty's argument involving the identical agreements on the same project (*Malan v QPS 23-10 Dev., LLC*, -- AD3d -- , 2025 NY Slip Op 02062, *2 [2d Dept 2025]). The Court explained, in affirming the trial court's grant of contractual indemnification in favor of QPS Development against General Casualty and dismissal of General Casualty's counterclaim for contractual indemnification, that:

"Here, QPS Development demonstrated its prima facie entitlement to judgment as a matter of law on the second third-party cause of action for contractual indemnification against General Casualty, and General Casualty failed to raise a triable issue of fact in opposition. QPS Development submitted, inter alia, the original contract, the takeover agreement, the settlement agreement, and the assignment. The original contract contains a broad indemnification provision obligating New Millennium to 'defend, indemnify and hold harmless' QPS Development, as assignee of QPS Developer's rights under the original contract, with respect to 'all losses [and] claims . . . arising out of or in connection with,' inter alia, any personal injury sustained as a result of the performance of the concrete work. The takeover agreement incorporates the original contract by reference except in the case of conflict or inconsistencies, in which case the terms of the takeover agreement would "supersede and amend" the original contract. . . .

General Casualty does not directly dispute that it had a contractual obligation to indemnify QPS Development consistent with the original contract prior to entering into the settlement agreement and the associated assignment. To the contrary, General Casualty contends that its indemnification obligation to QPS Development with respect to the plaintiffs' personal injury claim was extinguished by the settlement agreement and the assignment. This contention is without merit. Paragraph 8 of the settlement agreement expressly exempts from release 'any claims by third parties for personal injury for which [General Casualty] is liable.' This exception to the general release provisions is a specific provision that overrides the general release language. A contrary interpretation would nullify the personal injury exception contained in paragraph 8 of the settlement agreement. Under relevant principles of interpretation, the language of the settlement agreement demonstrates the parties' intent to preserve General Casualty's obligation to indemnify QPS Development with respect to the plaintiff's personal injury claim (*see generally Kefalas v Valiotis*, 197 AD3d 698, 702)" (*id.*, *2-3).

In light of this determination, the court rejects General Casualty's argument that its indemnification obligation was extinguished by the language of the settlement agreement. The court does not consider Katz's affirmation expounding on what was intended because the settlement agreement is clear and unambiguous on its face (*see W.W.W. Assoc.*, 77 NY2d at 162).

The court also finds that QPS Development and QPS Developer are entitled to conditional contractual indemnification against General Casualty, and that QPS Development and QPS Developer are entitled to dismissal of General Casualty's counterclaim for contractual indemnification (*see Malan*, 2025 NY Slip Op 02062, *1). As noted by the Second Department, the original contract provides that:

"To the fullest extent permitted by law, [New Millennium] shall defend, indemnify [QPS Developer and QPS Development]² . . . from any against all losses, claims (including, but not limited to, those alleging injury to third parties or damage to property of third parties), causes of action, lawsuits, costs, damages and expenses (including attorneys' fees and disbursements incurred in the enforcement of this indemnification), arising out of or in connection: (a) any personal or bodily injury, sickness, disease or death . . . sustained or purported to have been sustained as a result of performance of the Work" (NYSCEF Doc No. 106, exhibit F § 12.8.1).

² QPS Development appears in the list of additional insureds/indemnitees annexed to the original contract (NYSCEF Doc No. 106, exhibit F).

“The right to contractual indemnification depends upon the specific language of the contract” (*Trawally v City of New York*, 137 AD3d 492, 492-493 [1st Dept 2016] [internal quotation marks and citation omitted]). “[A] court may render a conditional judgment on the issue of indemnity[] pending determination of the primary action[] in order that the indemnitee [may] obtain the earliest possible determination as to the extent to which [the indemnitee] may expect to be reimbursed” (*Masciotta v Morse Diesel Intl.*, 303 AD2d 309, 310 [1st Dept 2003] [internal quotation marks and citations omitted]). Even where there are issues of fact as to an indemnitee’s active negligence, an award of conditional indemnification is warranted where the indemnification provision does not violate the General Obligations Law (*see Cuomo v 53rd & 2nd Assoc., LLC*, 111 AD3d 548, 548 [1st Dept 2013] [“Although, as third-party plaintiffs concede, there are issues of fact as to Plaza’s active negligence, Plaza is entitled to conditional summary judgment on its claim for contractual indemnification; the extent of its indemnification depends on the extent to which any negligence on its part is found to have contributed to the accident”]; *see also Cerverizzo v City of New York*, 116 AD3d 469, 471-472 [1st Dept 2014]).

The indemnification provision is triggered here. It is undisputed that plaintiff was injured while he was employed by an entity hired by General Casualty (*see Malan*, 2025 NY Slip Op 02062, *2). Thus, QPS Development and QPS Developer are entitled to conditional summary judgment on their contractual indemnification claim, as General Casualty makes no argument that these entities were the sole proximate cause of the accident, and the extent to which these indemnitees will be indemnified depends upon the resolution of their negligence (*see McKinney v Empire State Dev. Corp.*, 217 AD3d 574, 575 [1st Dept 2023]; *Cuomo*, 111 AD3d at 548). Since there has been no finding of any party’s negligence, an order requiring General Casualty to

reimburse QPS Development and QPS Developer for past and future attorneys' fees is premature (*ACC Constr. Corp. v Merchants Mut. Ins. Co.*, 200 AD3d 551, 553 [1st Dept 2021]).

In sum, QPS Development and QPS Developer are entitled to conditional contractual indemnification against General Casualty. General Casualty is not entitled to dismissal of the second third-party complaint.

QPS Development and QPS Developer's Breach of Contract Claim

QPS Development and QPS Developer move for summary judgment on their breach of contract claim. They argue that General Casualty concedes that it did not buy and maintain the required insurance naming QPS Development and QPS Developer as additional insureds.

“A party moving for summary judgment on its claim for failure to procure insurance meets its prima facie burden by establishing that a contract requiring the procurement of insurance was not complied with” (*Dorset v 285 Madison Owner LLC*, 214 AD3d 402, 404 [1st Dept 2023], quoting *Benedetto v Hyatt Corp.*, 203 AD3d 505, 506 [1st Dept 2022]). Thus, to meet their burden, QPS Development and QPS Developer are “required to show via testimonial or documentary evidence . . . that they were not named as insureds on any policies issued” (*Lucas v City of New York*, -- AD3d -- , 2025 NY Slip Op 01580, *3 [1st Dept 2025]). “Because the insurance procurement clause is entirely independent of the indemnification provisions in the contract, a final determination of liability for the failure to procure insurance ‘need not await a factual determination as to whose negligence, if anyone’s, caused the plaintiff’s injuries’” (*Spector v Cushman & Wakefield, Inc.*, 100 AD3d 575, 575 [1st Dept 2012], quoting *Kennelty v Darlind Constr.*, 260 AD2d 443, 445 [2d Dept 1999] [citations omitted]).

Here, QPS Development and QPS Developer have failed to meet their burden on their failure to procure insurance claim. The original contract required New Millennium to purchase

and maintain commercial general liability insurance and an umbrella/excess policy naming QPS Development and QPS Developer as additional insureds (NYSCEF Doc No. 106 § 12.1, exhibit F). However, contrary to their contention, General Casualty only argued that the breach of contract claim was extinguished by the settlement agreement. General Casualty does not appear to have conceded that it failed to buy and maintain required insurance. Accordingly, the branch of QPS Development and QPS Developer's motion on their breach of contract claim must be denied, "regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

QPS Development and QPS Developer's Affirmative Defenses to General Casualty's Counterclaim

Given that the court has dismissed General Casualty's counterclaim, the branch of its motion seeking dismissal of the affirmative defenses to its counterclaim is denied as academic (*see Fischer v RWSP Realty, LLC*, 53 AD3d 594, 595 [2d Dept 2008]).

Sanctions

Finally, QPS Development and QPS Developer request sanctions against General Casualty for frivolous conduct. QPS Development and QPS Developer argue that General Casualty was in possession of correspondence indicating the carve-out was intended to broadly cover all third-party personal injury claims, but did not submit it to the court when it moved for summary judgment. In addition, QPS Development and QPS Developer assert that Katz's affirmation contradicts an affirmation he also submitted in Kings County. In that action, Katz stated that "Counsel for QPS advised me that this language ('carve out') (which appears various times in the Settlement Agreement) was intended to address potential claims by employees of Cashin Spinelli & Ferretti ('CSF')" (NYSCEF Doc No. 109, Katz affirmation, ¶ 19).

In determining whether sanctions are appropriate, the court must look at the broad pattern of conduct by the offending parties or attorneys (*Levy v Carol Mgt. Corp.*, 260 AD2d 27, 33 [1st Dept 1999]). The litigation for which sanctions are sought must “(1) [be] completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) [be] undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) assert[] material factual statements that are false” (22 NYCRR 130-1.1 [c]). QPS Development and QPS Developer have failed to demonstrate that General Casualty made any false or misleading statements of fact (*see* 22 NYCRR 130-1.1 [c] [3]; *cf. Morales v Kerr*, 36 AD3d 503, 503 [1st Dept 2007]) or engaged in any “abusive, dilatory, or contumacious conduct” (*Cepeda v City of New York*, 211 AD3d 570, 571 [1st Dept 2022]). Therefore, QPS Development and QPS Developer’s request for sanctions and attorneys’ fees is denied.

CONCLUSION

Accordingly, it is

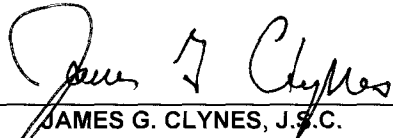
ORDERED that the motion of second third-party defendant General Casualty Company of Wisconsin for summary judgment dismissing the second third-party complaint and for summary judgment on its counterclaim for contractual indemnification is denied; and it is further

ORDERED that the cross-motion of defendants/third-party plaintiffs/second third-party plaintiffs QPS 23-10 Development LLC and QPS 23-10 Developer LLC for summary judgment is granted to the extent of granting them conditional contractual indemnification against second third-party defendant General Casualty Company of Wisconsin and dismissing second third-party defendant General Casualty Company of Wisconsin’s counterclaim for contractual

indemnification, and second third-party defendant General Casualty Company of Wisconsin's counterclaim for contractual indemnification is dismissed, and the motion is otherwise denied.

This constitutes the Decision and Order of the Court.

6/5/2025
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE