

Patino v 51 W. 81st St. Corp.

2025 NY Slip Op 32751(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 153838/2020

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART 49M

Justice

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CHRISTOPHER PATINO,

Plaintiff,

- v -

51 WEST 81ST STREET CORP.,

Defendant.

-----X

51 WEST 81ST STREET CORP.

Third-Party Plaintiff,

-against-

NEW FORCE CONSTRUCTION CORP.

Third-Party Defendant.

-----X

INDEX NO. 153838/2020

MOTION DATE 05/16/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596088/2020

The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this personal injury action, defendant/third-party plaintiff 51 West 81st Street Corp. (defendant) moves pursuant to CPLR 2221 for leave to reargue its prior motion for summary judgment on its third-party cause of action for contractual indemnification, which the court denied as moot by Decision and Order, dated January 7, 2025 (NYSCEF # 93 – Prior Order). Third-party defendant New Force Construction Corp. (New Force) opposes the motion.

“A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [quotation marks omitted]). The determination to grant leave to reargue lies within the sound discretion of the court (*V. Veeraswamy Realty v Yenom Corp.*, 71 AD3d 874, 874 [2d Dept 2010]).

In the Prior Order, the court granted defendant’s motion for summary judgment dismissing plaintiff’s Labor Law § 200 and common-law negligence claims

(Prior Order at 3-4). The court determined that “without evidence of supervisory control or a specific dangerous condition attributable to the defendant” for purposes of plaintiff’s Labor Law § 200 and common-law negligence claims, liability could not attach (*id.* at 4). The court then turned to defendant’s third-party contractual indemnification claim and concluded that, because defendant was not liable for plaintiff’s injuries under either Labor Law § 200 or common-law negligence, the contractual indemnification claim did not trigger (*id.* at 5).

Now, in seeking leave to reargue, defendant contends that, in denying summary judgment on its contractual indemnification claim, the court overlooked the fact that plaintiff’s Labor Law §§ 240(1) and 241(6) claims remain “very much alive” and that defendant had “proved itself free from negligence” (NYSCEF # 101 ¶¶ 11-12, 15). As defendant puts it, because the remaining claims in this action are statutory in nature, and because the court has already concluded that defendant is free of negligence, it follows that defendant is entitled to indemnification under the AIA contract between defendant and New Force (the Contract) (*id.* ¶¶ 46-60). The court agrees that these overlooked facts should have been considered upon resolving defendant’s contractual indemnification claim, particularly given the plain terms of the Contract between the parties. Therefore, defendant’s motion for leave to reargue is granted. With reargument granted, the court returns to defendant’s motion for summary judgment on its third-party contractual indemnification claim.

Under New York law, “[a] party is entitled to full contractual indemnification provided that the ‘intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances’” (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987]; *Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82, 86 [1st Dept 2018]). If a contractual indemnification provision is “unambiguous and clearly sets forth the parties’ intention,” summary relief is appropriate (*see Roddy v Nederlander Producing Co. of Am., Inc.*, 44 AD3d 556, 556 [1st Dept 2007]). In this regard, “[t]he right to contractual indemnification depends upon the specific language of the contract” (*Sherry v Wal-Mart Stores East L.P.*, 67 AD3d 992, 994 [2d Dept 2009] [internal citation and quotation omitted]). In contractual indemnification, “the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021], quoting *Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]). Unless the indemnification clause explicitly requires a finding of negligence on behalf of the indemnitor, “[w]hether or not the proposed indemnitor was negligent is a non-issue and irrelevant” (*Correia*, 259 AD2d at 65).

Here, there is no dispute from the record that, at the time of plaintiff’s accident, the Contract, including the Rider, was in full force and effect (*see* NYSCEF # 105 ¶ 6). As relevant here, the Contract provides that

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder

(NYSCEF # 103 § 9.15.1). However, as set forth in the Rider, dated August 14, 2017

Contractor agrees to indemnify, defend and hold harmless Owner, its Managing Agent, the Architect and their respective employees and agents . . . from any and all third party claims, suits, damages, liabilities, professional fees, including attorney's fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage, including loss of use thereof, (hereinafter collectively referred to as "Claims" arising out of or in connection with the performance of the work of the Contractor. . . . This agreement to indemnify specifically contemplates full indemnity in the event of liability imposed against an Indemnified Party, without negligence and solely by reason of statute, operation of law or otherwise . . .

(*id.* § 11.3). The Rider also clarifies that in the event of a conflict between provisions of the Contract and the Rider, the Rider controls (*id.* § 11.2 ["This Agreement as amended, supplemented and modified; addenda of a later date shall control over that of an earlier date"]).

A complete reading of the Contract leads to only one conclusion: indemnification under the Contract can occur without a finding of negligence on the part of New Force (NYSCEF # 103 § 11.3). Consequently, because the court has already concluded that there was no evidence of supervisory control or a specific dangerous condition attributable to the defendant that could support either a Labor Law § 200 claim or a common-law negligence claim, defendant has plainly met its prima facie burden of establishing that it was free of negligence in connection with plaintiff's injury (*see Correia*, 259 AD2d at 65 ["In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability"]). As a result, plaintiff has established its entitlement to indemnification from New Force under the broad terms of the Contract *Pimentel v DE Freight LLC*, 205 AD3d 591, 594 [1st Dept

2022] [“because no party contests the dismissal of plaintiff’s Labor Law § 200 and common-law negligence claims as against Namor, Namor established its freedom from active negligence, and therefore was entitled to contractual indemnification from TEI”]).

In response, New Force fails to offer any basis to rebut defendant’s showing that it is entitled to indemnification under the Contract. Rather, New Force merely challenges summary judgment on the grounds that plaintiff not established liability on his remaining labor law claims (see NYSCEF # 113 ¶¶ 9-21). But the fact that liability (if any) has yet not been ascertained at this juncture does not preclude an entry of conditional summary judgment in defendant’s favor (see *Auliano v 145 E. 15th St. Tenants Corp.*, 129 AD3d 469, 470 [1st Dept 2015] [granting defendant conditional summary judgment on cross claim for contractual indemnification against co-defendant where indemnification clause in contract between parties was “broad” and issues of fact existed as to defendant’s negligence]; *Hong-Bao Ren v Gioia St. Marks, LLC*, 163 AD3d 494, 496 [1st Dept 2018] [holding that conditional summary judgment on contractual indemnification claim was appropriate “even when judgment has yet to be rendered . . . in the main action” because it “serves the interest of justice and judicial economy in affording the indemnitee ‘the earliest possible determination as to the extent to which he may expect to be reimbursed’”]).

Accordingly, it is hereby

ORDERED that defendant/third-party plaintiff 51 West 81st Street Corp.’s motion for reargument is granted; and it is further

ORDERED that, upon reargument, defendant/third-party plaintiff 51 West 81st Street Corp.’s motion for conditional summary judgment is granted as to its contractual indemnification claim against third-party defendant New Force Construction Corp.; and it is further

ORDERED that defendant/third-party plaintiff shall serve a copy of this order with notice of entry upon the other parties and the Clerk of the Court within ten (10) days of the date of this order.



MARGARET A. CHAN, J.S.C.

7/24/2025
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE