

Kaht v JPMorgan Chasebank, N.A.

2025 NY Slip Op 32876(U)

July 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 521056/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 521056/2022
Motion Date: 6-5-25
Mot. Seq. No.: 1, 2

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STEVEN KAHT AND MARIA KAHT,

Plaintiff,

-against-

DECISION/ORDER

JPMORGAN CHASEBANK, N.A.,

Defendant.

-----X

JPMORGAN CHASE BANK, N.A.,

Third-Party Plaintiff,

-against -

JONES LANG LASALLE AMERICAS, INC.,

Third-Party Defendant.

-----X

The following papers, which are e-filed with NYCEF as Document Numbers 43-82, were read on these motions:

In this action to recover damages for personal injuries, in motion sequence # 1, third-party defendant, Jones Lang LaSalle America's, Inc. ("JLLA") moves for an Order pursuant to CPLR 3212 granting summary judgment dismissing all third-party claims asserted against it. In motion sequence # 2, defendant/third-party plaintiff, JPMorgan Chase Bank, N.A. ("Chase"), moves for or an order pursuant to CPLR § 3212 awarding summary judgment to Chase on its claims against JLLA for a defense and indemnification and for dismissal of JLLA's counterclaims, as well as for the recovery of Chase's attorneys' fees and costs.

Background:

Plaintiff, Steven Kaht, an employee of JLLA, commenced this action alleging that he was injured on September 21, 2021, when he fell from a ladder while attempting to unclog a drain in a building owned by Chase. Pursuant to a written contract, Chase had retained JLLA to perform maintenance services for the building. Prior to the accident, the plaintiff had climbed the ladder

to access and open a trap on a drainpipe located in the ceiling. While pulling the trap to clear the clog, water suddenly gushed out, causing him to fall to the ground.

In his complaint, the plaintiff asserts claims against Chase for common-law negligence, as well as claims under Labor Law §§ 200, 240(1), and 241(6). After appearing in the action, Chase commenced a third-party action against JLLA, asserting claims for contribution, common-law indemnification, and contractual indemnification. JLLA filed an answer to the third-party complaint, asserting counterclaims against Chase for contribution.

Discussion:

In support of motion sequence # 1, third-party defendant argues, among other things, that plaintiff's Labor Law §§ 240(1) and 241(6) claims must be dismissed because the plaintiff was involved in routine maintenance work at the time of the accident. Routine maintenance activities performed in a non-construction, non-renovation context are not protected under Labor Law § 240(1) (see *Paciente v. MBG Dev., Inc.*, 276 AD2d 761, 715 NYS2d 436; *Brown v. Christopher St. Owners Corp.*, 87 NY2d 938, 641 NYS2d 221; *Vanerstrom v. Strasser*, 240 AD2d 563, 659 NYS2d 77; *Leathers v. Zaepfel Dev. Co.*, 121 AD3d 1500, 993 NYS2d 817). Similarly, such activities are not covered under Labor Law § 241(6) (see *Washington-Tatum v. City of New York*, 205 AD3d 976, 166 NYS3d 577; *Garcia-Rosales v. Bais Rochel Resort*, 100 AD3d 687, 954 NYS2d 148; *Byrnes v. Nursing Sisters of the Sick Poor, Inc.*, 170 AD3d 796, 93 NYS3d 902).

The proponent of a motion for summary judgment has the initial burden of making a “prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 324, 508 N.Y.S.2d 923, 501 K.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; see also CPLR 3212[b]). If the proponent makes such a showing, to defeat the motion “the burden shift[s] to the part[ies] opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the proponent fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers” (*Vega*,

18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]).

Here, the third-party defendant made a prima facie showing that at the time of the accident, the plaintiff was engaged in routine maintenance unrelated to any construction, renovation, or demolition work at the time of the accident. Notably, that branch of third-party defendant's motion for summary judgment dismissing the plaintiff's Labor Law §§ 240(1) and 241(6) claims is unopposed. Plaintiff's claims under Labor Law §§ 240(1) and 241(6) are therefore dismissed.

While the third-party defendant argues in its memorandum of law in support of the motion that plaintiffs Labor Law § 200 claim and common law negligence claim should be dismissed as against JLLA, plaintiff has no direct claims against. Since JLLA is not seeking dismissal of the plaintiff's claims against Chase based on common-law negligence and Labor Law § 200(1), the Court will not address whether these claims are viable.

Turning to Chase's motion, since the plaintiff is not alleging that he suffered a "grave injury" within the meaning of Workers' Compensation Law § 11, JLLA's counterclaims against Chase for common-law indemnity and contribution are dismissed (see *Benedetto v. Carrera Realty Corp.*, 32 A.D.3d 874, 876, 822 N.Y.S.2d 542, 544–45; *Castillo v. 711 Grp., Inc.*, 41 A.D.3d 77, 79, 833 N.Y.S.2d 642, 643 (2007), aff'd, 10 N.Y.3d 735, 882 N.E.2d 885).

With respect to that branch of Chase's motion seeking summary judgment on its claim against JLLA for contractual indemnification, the contract between Chase and JLLA contains an indemnification provision, which, in relevant part, provides as follows:

"14.1 Indemnity by Supplier. Supplier agrees to indemnify, defend, and hold harmless JPMC and the other Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns from any and all Losses and threatened Losses due to third-party claims to the extent arising from or in connection with any of the following:

(k) Supplier Personnel Injury Claims. Any claim by Supplier Personnel for death or bodily injury suffered on or at a Facility,

except to the extent caused by JPMC's gross negligence or willful misconduct."

The above provisions require JLLA, the supplier identified in the contract, to defend and indemnify Chase for claims of JLLA's employees, which plaintiff is one, except to the extent the claim arises out of Chase's gross negligence and willful misconduct. The court construes the contract to mean that JLA is required to indemnify Chase for its own negligence but not for its gross negligence or willful misconduct. An indemnity agreement will be construed to indemnify a person against his own negligence where, as here, such intention is expressed in unequivocal terms (see *Kurek v. Port Chester Hous. Auth.*, 18 N.Y.2d 450, 455, 276 N.Y.S.2d 612, 223 N.E.2d 25; *Thompson–Starrett Co. v. Otis El. Co.*, 271 N.Y. 36, 41, 2 N.E.2d 35). "That is not to say that the indemnity clause must contain express language referring to the negligence of the indemnitee, but merely that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement, and the surrounding facts and circumstances" (*Margolin v. New York Life Ins. Co.*, 32 N.Y.2d 149, 153, 344 N.Y.S.2d 336, 297 N.E.2d 80). "When the intent is clear, an indemnification agreement will be enforced even if it provides indemnity for one's own or a third party's negligence" (*Bradley v. Earl B. Feiden, Inc.*, 8 N.Y.3d 265, 274–275, 832 N.Y.S.2d 470, 864 N.E.2d 600). Here, as stated, the agreement requires JLLA to indemnify Chase for bodily injury claims of JLLA employees unless there are triable issues as to whether the claim arose out of Chase's gross negligence or willful misconduct.

Gross negligence "differs in kind, not only degree, from claims of ordinary negligence" (*Colnaghi, U.S.A. v. Jewelers Protection Servs.*, 81 N.Y.2d 821, 823, 595 N.Y.S.2d 381, 611 N.E.2d 282). To constitute gross negligence, a party's conduct must "'smack[] of intentional wrongdoing'" or "evinced [] a reckless indifference to the rights of others" (*Sommer v. Federal Signal Corp.*, 79 N.Y.2d at 554, 583 N.Y.S.2d 957, 593 N.E.2d 1365, quoting *Kalisch–Jarcho, Inc. v. City of New York*, 58 N.Y.2d 377, 385, 461 N.Y.S.2d 746, 448 N.E.2d 413).. Here, Chase has established prima facie that plaintiff's accident was not a result of its gross negligence or willful conduct. JLLA has failed to raise a triable issue of fact. Accordingly, pursuant to its contract with Chase, JLLA is required to defend and indemnify Chase in this action.

Lastly, the indemnification clause is not barred by New York General Obligations Law § 5-322.1, which, among other things, prohibits owners from gaining indemnification for their own

negligence based on contracts relative to the “construction, alteration, repair or maintenance” of buildings, structures, appurtenances, and appliances. The term “maintenance” in General Obligations Law § 5–322.1 was intended to mean services related to maintaining the integrity of the building and the functioning of its appliances and not routine maintenance (see *Skerrett v. LIC Site B2 Owner, LLC*, 199 A.D.3d 956, 158 N.Y.S.3d 186, 191; *Quevedo v. City of New York*, 56 N.Y.2d at 155–156, 451 N.Y.S.2d 651, 436 N.E.2d 1253; *Gavin v. Long Is. Light. Co.*, 255 A.D.2d 551, 552, 681 N.Y.S.2d 87; *Edwards v. Twenty-Four Twenty-Six Main St. Assoc.*, 195 A.D.2d 592, 593, 601 N.Y.S.2d 11). As stated above, the plaintiff was involved in routine maintenance at the time of the accident.

Accordingly, it is hereby

ORDERED that plaintiff’s claims pursuant to Labor Law sections 240(1) and 241(6) are dismissed; and it is further

ORDERED that JLLA’s counterclaims against Chase for common-law indemnity and contribution are dismissed; and it is further

ORDERED that JLLA is required to defend and indemnify Chase in this action and to pay Chase's reasonable attorneys’ fees. An attorneys’ fees hearing will be conducted at the conclusion of the trial.

This constitutes the decision and order of the court.

Dated: July 18, 2025



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.