

Massachusetts Bay Ins. Co. v Manim AG

2025 NY Slip Op 33264(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 162157/2024

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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MASSACHUSETTS BAY INSURANCE COMPANY *a/s/o*
FIRST GARDEN CORPORATION,

Plaintiff,

INDEX NO. 162157/2024

MOTION DATE 05/12/2025

MOTION SEQ. NO. 001

- v -

MANIM AG, THE I. GRACE COMPANY COMMISSIONED
PRIVATE RESIDENCES, INC., SKINNER PLUMBING &
HEATING CORP., A.D. WINSTON CORP., DEMAR
PLUMBING CORP., COLLADO ENGINEERING,
D.P.C., JOHNSON CONTROLS FIRE PROTECTION LP,
JOHNSON CONTROLS SECURITY SOLUTIONS LLC,

Defendants.

**DECISION + ORDER ON
MOTION**

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THE I. GRACE COMPANY COMMISSIONED PRIVATE
RESIDENCES, INC.

Plaintiff,

Third-Party
Index No. 595297/2025

-against-

SELLDORF ARCHITECTS P.C., SELLDORF ARCHITECTS,
LLC, SELLDORF DESIGN LLC, A.D. WINSTON SERCICE INC.

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after a final submission date of June 5, 2025, Third-Party Defendants Selldorf Architects P.C., Selldorf Architects, LLC, and Selldorf Design LLC's (collectively "Selldorf") motion to dismiss Defendant/Third-Party Plaintiff The I. Grace Company Commissioned Private Residences, Inc.'s ("Grace Company") Third-Party Complaint is denied.

I. Background

Plaintiff Massachusetts Bay Insurance Company (“Plaintiff”) insured a co-op building at 38-42 E 1st Street, New York, New York (the “Premises”) owned by First Garden Corporation (“First Garden”). Defendant Manim AG (“Manim”) was the lessee of Apartment 3C in the Premises. On June 1, 2016, Manim hired Third-Party Plaintiff Grace Company to oversee a renovation project of the third, fourth, fifth, and sixth floors of the Premises (the “Renovation”). Selldorf provided architectural plans for the Renovation.

On January 15, 2022, allegedly a sprinkler head in a bedroom of Apartment 3C activated due to an air diffuser. Allegedly, during the Renovation, either a wall was moved that resulted in the diffuser being too close to the sprinkler, or the sprinkler was moved too close to the diffuser. The sprinkler water flooded several areas of the Premises causing property damage. Plaintiff now seeks to recoup that property damage in this subrogation action against Manim and Manim’s various contractors. The Grace Company, which was Manim’s construction manager, initiated a third-party action against Selldorf seeking contribution and common law indemnification. Selldorf now moves to dismiss Manim’s third-party complaint asserted against it pursuant to CPLR 3211(a)(1) and (a)(7).

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law (*Goshen v*

Mutual Life Ins. Co. of New York, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

B. Common Law Indemnification

As a preliminary matter, the Court denies Selldorf's application to disregard Grace Company's late opposition. New York's public policy favors trying cases on the merits rather than technicalities (*see Genao v Salcedo Maintenance Corp.*, 168 AD3d 528, 529 [1st Dept 2019] citing *Yea Soon Chung v Mid Queens LP*, 139 AD3d 490 [1st Dept 2016]). The delay in filing opposition was not egregious, and Selldorf had sufficient time to file its reply. Therefore, the Court decides the motion on the merits.

Selldorf's motion to dismiss Grace Company's common law indemnification claim asserted against it is denied. Plaintiff sues the Grace Company under a theory of negligence, alleging the Grace Company, by its action or inactions, negligently directed the installation of the sprinkler system too close to the diffuser, and/or directed the wall be moved. At this stage of the litigation, accepting the allegations as true, if it is discovered that the sprinkler head and diffuser were placed too close together solely by virtue of architectural plans issued by Selldorf, and Grace Company merely followed those plans, then Grace Company may have a valid common law indemnification claim against Selldorf (*see, e.g. Moises-Ortiz v FDB Acquisitions LLC*, 221 AD3d 540, 541-42 [1st Dept 2023]; *Board of Managers of Porter House Condominium v Delshah 60 Ninth LLC*, 192 AD3d 415, 415 [1st Dept 2021]).

Nor does the documentary evidence definitively foreclose Grace Company's claims. The documents submitted, including the sprinkler plans and amended sprinkler plans, list Selldorf as the architect (NYSCEF Doc. 40). Grace Company also submitted a Department of Buildings

application, filed by Selldorf in July of 2016, listing a \$439,000.00 architectural and plumbing alteration on the third floor of the Premises, which was the location of the allegedly negligently placed sprinkler head, wall, and diffuser (NYSCEF Doc. 51). While Selldorf submits an affidavit arguing that Defendant Collado Engineering, D.P.E., with whom Selldorf has no relationship, was solely responsible for the installation and design of the sprinkler system, this denial creates an issue of fact requiring discovery and which cannot be resolved on a pre-answer motion to dismiss. Finally, while Selldorf argues it owed no duty to Grace Company, as the architect on the project, it did owe Grace Company and others on the project a duty to ensure the plans provided were accurate and would not result in future liability against contractors based on the contractors' reliance on allegedly negligent architectural designs.

C. Contribution

Selldorf's motion to dismiss Grace Company's contribution claim is denied. As discussed in the preceding section, there are unresolved issues of fact as to Selldorf's involvement in the design and construction of the Premises which, on this pre-answer motion to dismiss, precludes any finding that Selldorf is free of negligence. Moreover, Selldorf is incorrect that the contribution claim is barred by the economic loss rule. Plaintiff's Complaint against Grace Company alleges negligence and seeks to recover for, amongst other things, property damage (NYSCEF Doc. 34 at ¶ 70; *see also* CPLR 1401). If, after the completion of some discovery, it can be shown that Selldorf is free of any negligence or involvement with respect to causing the water damage at the heart of this lawsuit, Selldorf may renew its application for summary judgment.

Finally, the Court declines Selldorf's request to convert this pre-answer motion to dismiss into a motion for summary judgment pursuant to CPLR 3211(c) and finds the issues will be better

litigated in a future motion for summary judgment after there has been an exchange of discovery and the Court has a more fully developed record.

Accordingly, it is hereby,

ORDERED that Selldorf's motion to dismiss the Third-Party Complaint asserted against it is denied, and within twenty days of entry, Selldorf shall serve an Answer to the Third-Party Complaint; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed order be submitted any later than October 15, 2025¹; and it is further

ORDERED that within ten days of entry, counsel for Defendant/Third-Party Plaintiff The I. Grace Company Commissioned Private Residences, Inc. 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.

9/2/2025
DATE

Mary V Rosado J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

¹ This date is for the submission of a proposed order only, it is not to appear for a conference. If the parties have a serious discovery dispute requiring a conference, the parties shall notify the Court via e-mail to SFC-Part33-Clerk@nycourts.gov to be scheduled for an in-person or virtual conference.