

Abrishami v SIGMA Realty Assoc. LLC

2025 NY Slip Op 33294(U)

September 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 516345/2017

Judge: Wayne Saitta

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At an IAS Term, Part 89 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4th day of September 2025.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

-----X
KAMRAN ABRISHAMI,
Plaintiff,

- against -

SIGMA REALTY ASSOCIATES LLC, CBRE, INC. AND
MAVERICK BUILDING SERVICES, INC.,
Defendants.

-----X
SIGMA REALTY ASSOCIATES LLC,
Third-Party Plaintiff,

- against -

SANTANDER BANK, N.A.,
Third-Party Defendant.
-----X

DECISION & ORDER

Index No.: 516345/2017

Motion Sequence: 12

The following papers read on this motion:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Affidavits (Affirmations) and
Exhibits

284-287

Cross-motions Affidavits (Affirmations)
and Exhibits

289-290

Answering Affidavit (Affirmation)

291

Reply Affidavit (Affirmation)

Supplemental Affidavit (Affirmation)

This third-party action arises from a personal injury claim brought by plaintiff KAMRAN ABRISHAMI, who alleges that he sustained injuries due to mold exposure while working at a commercial office space leased to his employer, SANTANDER BANK, N.A. (SANTANDER) and owned by defendant SIGMA REALTY ASSOCIATES LLC (SIGMA).

SIGMA commenced a third-party action against SANTANDER, asserting claims for failure to defend, for failure to procure insurance, and for contractual indemnification, based on provisions contained in the parties' lease agreement.

The lease in this case contains provisions that are central to the dispute: Article 7.04, which requires SANTANDER to obtain insurance; and Article 10.09, which requires SANTANDER to indemnify SIGMA.

SANTANDER seeks to dismiss SIGMA's claims pursuant to CPLR 3211(a)(1), (5), and (7), and General Obligations Law § 5-321. SANTANDER argues that SIGMA's claim for failure to procure insurance is barred by the statute of limitations, and the indemnification clause in the lease is not void pursuant to GOL § 5-321 because it does not exclude SIGMA's negligence.

SIGMA concedes that the claims for breach of contract, failure to procure insurance, and failure to defend SIGMA in this action are time barred but argues that the indemnity clause is enforceable when it is read together with the lease's requirement to procure insurance.

General Obligations Law § 5-321 voids any lease provision that exempts a landlord from liability for its own negligence.

However, courts have interpreted GOL § 5-321 as permitting parties to allocate risk of liability to third parties through insurance, where the indemnity clause is the product of arm's-length negotiation between sophisticated parties and is coupled with a valid insurance procurement requirement (see *Hogeland v Sibley, Lindsay & Curr Co.*, 42 NY2d 153 [1977]; *Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412 [2006]).

There is a distinction between indemnity provisions for damage caused by the landlord to the tenant's own property and those covering damage to third parties.

New York courts generally prohibit landlords from using indemnification clauses to avoid liability for property damage caused by their own negligence, even where the lease requires the tenant to procure insurance (see *Great N. Ins. Co.*, 7 NY3d 412, at 417–418 [2006]; *Inchaustegui v 666 Fifth Ave. Ltd. P'ship*, 96 NY2d 111 [2001]; *Hogeland*, 42 NY2d 153 [1977]).

On the other hand, a lease provision requiring a tenant to indemnify a landlord for the landlord's own negligence is not void if it is part of a risk-shifting arrangement that allocates liability to a third-party insurer (*Hogeland v Sibley, Lindsay & Curr Co.*, 42 NY2d 153 [1977]; *Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412, at 417–18 [2006]; *On Point Window Treatment, Inc. v 208 Clinton Place, LLC*, 82 Misc 3d 1206(A), 2024 NY Slip Op 50241(U) [Sup Ct, Kings County 2024]).

This case involves potential liability to a third party, not a claim for damage to the tenant's own property.

The exceptionally large insurance requirement indicates that the parties intended that any covered losses would be paid by the insurer. Because the parties clearly sought to shift the burden of liability for the landlord's negligence to an insurer, the indemnification provision is not void pursuant to GOL § 5-321.

Article 10.09 obligates SANTANDER to indemnify SIGMA, and Article 7.04 requires SANTANDER to obtain \$50 million in liability insurance naming SIGMA as an additional insured. This arrangement is consistent with the enforceable risk-transfer provisions approved in *Hogeland*, *Great Northern*, and *On Point*, where courts found that the combination of an indemnification clause and an insurance procurement requirement showed a clear intent to avoid shifting liability directly to the tenant.

A separate question is whether SANTANDER's alleged failure to obtain the required insurance policy renders the indemnity clause unenforceable under General Obligations Law § 5-321.

The Court of Appeals has recognized that indemnity and insurance procurement provisions are distinct contractual obligations. In *Kinney v G.W. Lisk Co., Inc.*, 76 NY2d 215, at 219–220 (1990), the court held that while the parties could expressly agree to make insurance the exclusive source of indemnity, absent such language, a breach of the procurement obligation does not void the separate obligation to indemnify. This principle has been repeatedly applied, including in *Amato v Rock-McGraw, Inc.*, 297 AD2d 217, at 219 (1st Dept 2002), which held that the failure to obtain required insurance does not relieve the breaching party of indemnity liability, and that damages for the procurement breach are measured separately.

The allocation of liability to a third-party insurer is a key requirement for the exception to the prohibition in GOL § 5-321 (see *Hogeland v Sibley, Lindsay & Curr Co.*, 42 NY2d 153 [1977]; *Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412 [2006]; *On Point Window Treatment, Inc. v 208 Clinton Place, LLC*, 82 Misc 3d 1206(A), 2024 NY Slip Op 50241(U) [Sup Ct, Kings County 2024]).

Under New York law, indemnification and insurance procurement are “entirely independent” contractual obligations (*Kinney v G.W. Lisk Co., Inc.*, 76 NY2d 215, at 218–220 [1990]). Unless the lease expressly makes insurance the exclusive source of indemnity, a tenant’s failure to procure coverage does not void the indemnity obligation (*Amato v Rock-McGraw, Inc.*, 297 AD2d 217, 219 [1st Dept 2002]; *Roblee v Corning Cmty. Coll.*, 134 AD2d 803, at 805 [3d Dept 1987]). The lease imposes distinct obligations under Articles 7.04 and 10.09, neither of which is conditioned on the performance of the other. There is no language in the agreement suggesting that insurance was intended to be the exclusive mechanism for risk allocation. The structure instead mirrors *Kinney*, where indemnification was upheld despite the failure to obtain the agreed-upon insurance.

Moreover, a party cannot rely on its own breach to defeat a separate contractual duty (*Kinney*, 76 NY2d at 220). Allowing SANTANDER to avoid its indemnity obligation by invoking its failure to procure insurance would be inconsistent with this principle.

SANTANDER’s alleged failure to obtain the required coverage does not extinguish its separate contractual duty to indemnify, as the insurance procurement and indemnification provisions are independent obligations under New York law. Allowing SANTANDER to avoid indemnity on this basis would improperly permit it to benefit from its own breach.

Accordingly, the contractual indemnification provision in Article 10.09 is valid and enforceable, and SANTANDER’s motion to dismiss that claim is denied.

WHEREFORE, it is ORDERED, that the branch of the motion seeking dismissal of SIGMA’s contractual indemnification claim is Denied; and it is further,

ORDERED, that the branch of the motion seeking dismissal of the claims of breach of contract for failure to procure insurance and failure to defend SIGMA in this action is Granted; and it is further,

This constitutes the Decision and Order of the Court.

ENTER:



JSC

**HON. WAYNE SAITTA
J.S.C.**