Solidgold Realty, LLC v BKNY USA LLC
2025 NY Slip Op 33327(U)
September 5, 2025
Supreme Court, New York County
Docket Number: Index No. 152322/2020
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** ***Justice*** **PART** **11M**

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SOLIDGOLD REALTY, LLC

Plaintiff,

- v -

BKNY USA LLC

Defendant.

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INDEX NO. 152322/2020

MOTION DATE 04/16/2025

MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, 238, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 274, 275, 276, 277, 278

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is granted.

Background

Plaintiff Solidgold Realty, LLC is the owner of an apartment building in Brooklyn. The neighboring property is owned by defendant BKNY USA LLC ("Owner"), who in 2018 was conducting a construction project to build a residential building. Plaintiff and Owner entered into a license agreement related to the project in August of 2018. In the course of the project, Owner hired defendant Blue Stone Concrete Corp. to conduct excavation work near the property line. They also hired defendants Roman Bronnberg and Omega Construction Group (collectively, the "Bronnberg Defendants") as construction superintendents in June of 2018. On August 9, 2018, the Bronnberg Defendants were replaced with defendant David Colagiovanni.

Shortly after the excavation work began, which appears to have been in late September 2018 or early October 2018, structural damage appeared in Plaintiff's property, including cracks and visible leaning of the building. Four crack monitors were installed on August 31, 2018, with

a further eight monitors installed through February 2019 as the damage to Plaintiff's property escalated. A crack monitoring plan, which had been called for in the pre-construction survey, was not implemented until after the excavation activities had already caused damage. Plaintiff filed this underlying proceeding in March of 2020. Discovery has been conducted, and the note of issue has been filed.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

The Bronnberg Defendants bring the present motion for summary judgment, seeking to have all claims, crossclaims, and counterclaims pled against them dismissed on the grounds that they had no involvement in the construction activities that caused the damage that is the subject of this suit. Plaintiff has pled claims against the Bronnberg Defendants sounding in negligence and trespass, and for strict liability pursuant to New York City Administrative Code Section 3309. Several other defendants have crossclaimed against the Bronnberg Defendants for

indemnification. For the reasons that follow, all claims, crossclaims, and counterclaims pled against the Bronnberg Defendants are dismissed.

Strict Liability Is Unavailable Here

Section 3309.4 of the New York City Administrative Code provides for strict liability against those who "cause an excavation or fill to be made." It is clear from the testimony and other evidence produced during discovery that the Bronnberg Defendants were removed from the project before the excavation work at issue commenced. Plaintiff argues that the Bronnberg Defendants might have been required to install crack monitoring equipment before the excavation work began. But because the Bronnberg Defendants were not the construction superintendents for the project when the work began and were not involved with the project when the activity that caused the damage occurred, they could not be said to have caused an excavation to be made. *See, e.g., 87 Chambers, LLC v. 77 Reade, LLC*, 122 A.D.3d 540, 541 [1st Dept. 2014] (holding that an entity that was not the owner or the contractor who performed the excavation had no strict liability). There is no strict liability available here under Section 3309.4.

The Bronnberg Defendants Were Not Tortiously Liable as They Owed No Duty of Care

Plaintiff has also asserted tort claims sounding in negligence and trespass against the Bronnberg Defendants. Because the Bronnberg Defendants were not associated with the project at the time that the activity giving rise to tortious liability occurred, they had no duty of care owed to Plaintiff and therefore cannot be held liable. Testimony that the Bronnberg Defendants did not perform work on the project and were removed from any contractual obligations relating to the proposed project over a month before the earliest the work began suffices to establish a prima facie entitlement to summary judgment. While the precise date that work began has not been established, it is undisputed that it began weeks after the latest date that the Bronnberg

Defendants were associated with the project. Discovery has concluded and no party has raised a triable issue of fact going to whether the Bronnberg Defendants committed a tortious action at the time that they would have owed a duty of care to the Plaintiff. Therefore, dismissal of the tort claims asserted against the Bronnberg Defendants is proper. *See 87 Chambers*, at 541 (dismissing tort claims against a party that had no control over the construction work at issue).

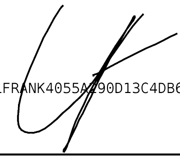
There is No Contractual or Common Law Indemnification Available Here

Several other defendants have asserted claims against the Bronnberg Defendants sounding in contractual and common law indemnification. As addressed above, it is clear that the Bronnberg Defendants' contractual relationship with any other party in this matter ended weeks before construction on the project began. With no active contractual relationship with any other party at the time the project began, there can be no contractual indemnity asserted against the Bronnberg Defendants. Common-law indemnity requires that "the proposed indemnitor was either negligent or exercised actual supervision or control over the injury-producing work." *Naughton v. City of New York*, 94 A.D.3d 1, 6 [1st Dept. 2012]. The injury-producing work occurred after the Bronnberg Defendants ceased to be involved with the project, therefore there can be no common-law indemnity asserted against them. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that all claims, cross-claims, and counterclaims asserted against defendants Roman Bronnberg and Omega Construction Group, Inc. are hereby dismissed; and it is further

ORDERED that the action is severed and remains against the remaining defendants.



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9/5/2025		LYLE E. FRANK, J.S.C.
DATE		

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION	
	X	GRANTED	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE