SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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FRANK GUARINO,

Plaintiff,

- v -

NORTH SHORE TOWERS APARTMENTS INCORPORATED, NORTH SHORE TOWERS MANAGEMENT INCORPORATED, CHARLES H. GREENTHAL MANAGEMENT CORP., ALLIEDBARTON SECURITY SERVICES LLC

Defendants.

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INDEX NO. 155313/2021

MOTION DATE 07/25/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

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

BACKGROUND

Plaintiff Frank Guarino ("plaintiff") commenced this action seeking damages for personal injuries, which he alleges stemmed from a slip-and-fall that occurred on December 20, 2020, on the premises of defendants North Shore Towers Apartments, Inc. and Charles H. Greenthal Management Corp (collectively, "North Shore Towers").

Plaintiff asserts a claim for negligence against North Shore Towers, the owner of the premises; Charles H. Greenthal Management Corp., the management agent of the premises; and Universal Protection Service, LLC d/b/a Allied Universal Security Services i/s/h/a AlliedBarton Security Services LLC ("Allied"), the security contractor on the premises hired by North Shore Towers. North Shore Towers asserts several crossclaims against Allied for contribution, indemnity, and breach of contract.

ALLEGED FACTS

On or around July 10, 2020, North Shore Towers and Allied executed a written "Security Agreement" (Security Agreement, Exhibit M) in which North Shore Towers contracted for Allied to serve as the security contractor on North Shore Towers's premises at 270-10 Grand Central Parkway, Floral Park, NY 11005. The Security Agreement provided that Allied would provide security guards to patrol North Shore Towers's premises while also surveilling the premises for suspicious persons and dangerous conditions. The Security Agreement also provided that the complete scope of Allied's responsibilities on North Shore Towers's premises would be articulated in "post instructions mutually agreed to by all parties" (Security Agreement, Exhibit M, at 2).

Sometime after July 10, 2020, North Shore Towers provided Allied with the post instructions ("Post Orders") detailing the scope of Allied's duties on the premises. Among other instructions, the Post Orders provided that while patrolling the property, Allied's guards should inspect the property for "trip/fall conditions" and "make proper notifications" of such conditions to North Shore Towers management when they were discovered. The Post Orders did not, however, provide that Allied would in any way be responsible for the removal of snow or ice.

On December 20, 2020, plaintiff alleges that while he was lawfully present in North Shore Towers's underground parking garage, he slipped and fell on a mixture of snow and ice, causing serious injuries. Plaintiff contends that the mixture of snow and ice was caused by the negligence of both North Shore Towers and Allied in failing to adequately inspect the parking garage for dangerous conditions and remediate those conditions.

PENDING MOTION

On September 8, 2025, Allied moved for an order granting Summary Judgment to dismiss plaintiff's Amended Complaint. Although not specified in the notice of motion, Allied also seeks in the underlying papers to dismiss all of North Shore Towers's crossclaims against it under CPLR 3212.

Plaintiff filed no opposition to the motion.

On August 22, 2025, North Shore filed opposition. The motion was subsequently marked submitted and the Court reserved decision.

DISCUSSION

Standard of Review.

Summary judgment is a drastic remedy reserved for cases when it is apparent that "no material and triable issue of fact is presented" (*Sillman v Twentieth Century–Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

To prevail on a motion for summary judgment, the movant must establish entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact (CPLR 3212[b]; *Matter of NY City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). When the movant meets this burden, the nonmovant may overcome the motion by offering admissible evidence demonstrating the existence of factual issues requiring a trial (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" (*id.*, quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]).

When deciding the motion, courts will view the motion in a light most favorable to the nonmovant, "according [that party] the benefit of every reasonable inference" (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

Plaintiff's negligence claim and North Shore Towers's contribution claim fail as a matter of law because Allied owed no duty to plaintiff

In any negligence action, the threshold question is whether "the alleged tortfeasor owed a duty of care to the injured party" (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138 [2002]; *see also Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). While a jury decides the extent to which a particular duty was breached, courts are tasked with determining whether any such duty exists (*Tagle v Jakob*, 97 NY2d 165, 168 [2001]). When articulating the nature and scope of the duty, the court must "tak[e] into consideration the reasonable expectations of the parties and society generally" (*id.*).

Further, the right of contribution arises among tortfeasors "who share culpability for an injury to the plaintiff and whose liability may be equitably apportioned according to fault" (*Riviello v Waldron*, 47 NY2d 297, 305 [1979] [emphasis added], citing CPLR 1401). Thus, if Allied owed no duty to plaintiff, Allied cannot be liable for contribution to North Shore Towers for plaintiff's injury.

A landowner ordinarily owes a duty of care "to maintain [the premises] in a reasonably safe condition" (*Gronski v County of Monroe*, 18 NY3d 374, 379 [2011], citing *Basso v Miller*, 40 NY2d 233, 241 [1976]). A landowner may enter into an agreement with another party to assist the landowner in maintaining the premises in a reasonably safe condition. But this contractual obligation generally does not impose the same duty on the contractor to exercise reasonable care in favor of a noncontracting, third-party beneficiary (*Espinal*, 98 NY2d at 138).

For a third-party beneficiary to recover for injuries stemming from a contractor's failure to perform a contractual obligation, "it must clearly appear from the provisions of the contract that the parties . . . intended to confer a direct benefit on the alleged third-party beneficiary to protect him from physical injury" (*Bernal v Pinkerton's, Inc.*, 382 NYS2d 769, 769 [1st Dept 1976]). No mention of plaintiff appears in the July 10, 2020, Security Agreement between North Shore Towers and Allied (*see* Security Agreement, Exhibit M), and North Shore Towers does not dispute that the Security Agreement was not meant to confer a direct benefit onto plaintiff.

However, under *Espinal v Melville Snow Contractors*, the Court of Appeals recognizes three instances when a contractor owes a duty of care to a noncontracting third party (*Landon v Kroll Lab. Specialists, Inc.*, 22 NY3d 1, 6 [2013], citing *Espinal*, 98 NY2d at 140). First, a contractor assumes such a duty when the contractor, in failing to exercise reasonable care in the performance its duties, "launche[s] a force or instrument of harm" against the third party (*Espinal*, 98 NY2d at 139, citing *HR Moch Co. v Rensselaer Water Co.*, 247 NY 160, 168 [1928]). Second, when performance of a contractual obligation "induce[s] detrimental reliance on continued performance" and the contractor's failure to perform those obligations "works an injury upon the [third party]," a contractor assumes such a duty (*id.* at 139–40, citing *Eaves Brooks Costume Co. v YBH Realty Corp.*, 76 NY2d 220, 226–27 [1990]). Finally, when a contractor "entirely displace[s] the other party's duty to maintain the premises safely," the contractor assumes a duty of care to a third party (*id.* at 140, citing *Palka v Servicemaster Mgmt. Servs. Corp.*, 83 NY2d 579, 589 [1994]). The Court analyzes these three scenarios in turn.

Allied did not launch a force or instrument of harm against plaintiff.

A contractor "launche[s] a force or instrument of harm" against a third party when the contractor affirmatively or negligently creates or exacerbates a dangerous condition on the

premises (*HR Moch Co. v Rensselaer Water Co.*, 247 NY 160, 167–68 [1928] [Cardozo, Ch. J.]; *Church v Callanan Indus.*, 99 NY 2d 104, 111 [2002]). Neither North Shore Towers nor plaintiff contends that Allied created or exacerbated the slippery conditions within the parking garage. Rather, North Shore Towers argues that plaintiff's injuries were caused by Allied's failure to inspect the premises and report the natural accumulation of snow and ice to management for North Shore Towers (Opposition to Summary Judgment at 4, ¶ 10). Because Allied was not alleged to have created or exacerbated the dangerous conditions leading to plaintiff's injuries, Allied did not owe plaintiff a duty of care under the first prong of *Espinal*.

Plaintiff did not detrimentally rely on Allied's purported duty to inspect the premises for slippery hazards such as snow and ice.

When a contractor's performance of a contractual obligation induces a third party to rely on the performance of that obligation such that nonperformance would "positively or actively . . . work[] an injury" on the third party, the contractor assumes a duty of care to the third party (*Eaves Brooks Costume Co. v YBH Realty Corp.*, 76 NY2d 220, 226 [1990]). Plaintiff does not allege that he knew about the agreement between Allied and North Shore Towers. There is also nothing in the underlying papers indicating that plaintiff relied on Allied for the inspection and removal of snow on the premises, nor is there anything to support that Allied induced plaintiff to rely on these services. As such, Allied did not owe plaintiff a duty under the second prong of *Espinal*.

Allied did not entirely displace North Shore Towers's duty to maintain a safe premises regarding inspection of the premises for dangerous conditions

A landowner's duty to maintain safe premises is entirely displaced by a contractor's obligation when they execute an agreement that constitutes a "comprehensive *and* exclusive property maintenance obligation which the parties could have reasonably expected to displace [the landowner's] duty" (*Jackson v Bd. of Educ. of NY*, 812 NYS2d 91, 98 [1st Dept 2006]

[emphasis added], citing *Espinal*, 98 NY2d at 141). In *Espinal*, the Court of Appeals held that a snow-removal contract was neither comprehensive nor exclusive, since the landowner retained responsibility for inspecting the premises and notifying the contractor of snow accumulation (*Espinal*, 98 NY2d at 141). In *Jackson v Board of Education*, the First Department similarly held that an agreement between a university and a maintenance company to clean an area of the campus where the plaintiff had slipped was neither comprehensive nor exclusive (812 NYS2d 91, 98). First, the obligation was not comprehensive because it did not require the maintenance company to "assume a blanket responsibility" to clean the entire university campus (*id.*). Second, the maintenance company's purported obligation to clean that area was not exclusive because another contractor had been responsible to clean that same area (*id.*).

Like the agreements in *Espinal* and *Jackson*, Allied's obligation to inspect the premises and report dangerous or slippery conditions to North Shore Towers was neither comprehensive nor exclusive. Regarding comprehensiveness, neither the Security Agreement nor Post Orders required Allied to inspect the entire property for slip-and-fall hazards. While the Post Orders for Allied's security personnel state that they were responsible for the surveillance and reporting of "trip/fall conditions[] [and] issues within the garage" (Exhibit L at 13), North Shore Towers's Snow Removal Procedures list a number of additional areas for which North Shore Towers was responsible—such as the sidewalks, lobby, and garage ramps (NST Snow Removal Procedures, Exhibit K at 3–4). Because any of Allied's obligations regarding the inspection and removal of wintery conditions did not encompass the entire property, Allied's obligation was not comprehensive.

Regarding exclusivity, North Shore Towers admits that Allies was not responsible for snow removal on the property, stating that "[w]ith respect to snow removal, North Shore Towers

managed this process" (Opposition to Summary Judgment at 2, ¶ 3). Allied also was not solely responsible for inspecting the garage for wintery conditions. North Shore Towers's Snow Removal Procedures provides, "All . . . Garage levels will be inspected for Snow Drifts and assign personnel [sic] to remove snow as needed" (NST Snow Removal Procedures, Exhibit K at 6). These overlapping obligations between North Shore Towers and Allied are similar to the overlapping obligations between the contracting parties in *Jackson* and *Espinal*, which each involved multiple entities being responsible for the maintenance of the same space on the landowner's property (*Jackson*, 812 NYS2d at 98; *Espinal*, 98 NY2d at 141).

Accordingly, because Allied did not entirely displace North Shore Towers's responsibility to inspect and maintain a reasonably safe premises through both a comprehensive and exclusive agreement, Allied did not owe plaintiff a duty under the third prong of *Espinal*.

Because Allied did not owe plaintiff a duty of reasonable care to ensure a safe premises under the three *Espinal* scenarios, Allied cannot be liable to plaintiff for negligence for the failure to identify and remediate slippery conditions within North Shore Towers's parking garage. Accordingly, the complaint is dismissed as against Allied as is North Shore Towers's claim for contribution.

Indemnification.

Allied contends that North Shore Towers no agreement existed between the two granting North Shore Towers a right of indemnification (Affirmation in Support of Motion for Summary Judgment at 7–8, ¶¶ 43–46). Allied also contends that North Shore Towers possessed no right of common-law indemnification against Allied (*id.* at 8, ¶¶ 47–49).

Indemnity is "the right of one party to shift the entire loss to another" (23 NY Jur 2d, Contribution, Indemnity, and Subrogation § 73). A party's right to indemnification arises in two

scenarios: (1) contractual, or express, indemnification or (2) common-law, or implied, indemnification. (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374–75 [2011]). Common-law indemnification arises "based upon the law's notion of what is fair and proper as between the parties" (*id.*). North Shore Towers cannot establish indemnity through contractual indemnification; however, triable questions of fact exist as to whether North Shore Towers possessed a right of common-law indemnification.

No express contract existed between North Shore Towers and Allied to indemnify North Shore Towers.

The right to indemnity under an express contract "depends upon the specific language of the contract" (*Trawally v City of New York*, 27 NYS3d 505, 506 [1st Dept 2016]. Further, when parties are under no legal duty to indemnify, "a contract assuming [an indemnity] obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" (*Hooper Assocs. v AGS Computers*, 74 NY2d 487, 491–92 [1989]). Agreements to procure insurance are "not an agreement to indemnify or hold harmless" (*Kinney v GW Lisk Co.*, 76 NY2d 215, 218 [1990] [emphasis added]). As the Court of Appeals explains, "Whereas the essence of an indemnification agreement is to relieve the promisee of liability, an agreement to procure insurance specifically anticipates the promisee's continued responsibility for its own negligence for which the promisor is obligated to furnish insurance" (*id.* [internal citations and quotations omitted]).

The Security Agreement between North Shore Towers and Allied is silent on the indemnification of North Shore Towers. The "INSURANCE AND INDEMNIFICATION" section of the Security Agreement only states the following:

> [Allied] maintains comprehensive General Liability insurance, which includes protection against professional liability, false arrest, unlawful detention, wrongful entry, and slander. This insurance has a $5,000,000 combined limit for bodily injury

> and property damage . . . . [North Shore Towers] is named as an additional insured only as respects to the negligent acts, errors or omissions of [Allied] employees in the performance of their agreed upon duties. (Security Agreement, Exhibit M at 3.)

The only part of the Security Agreement that refers to indemnification provides that North Shore Towers, not Allied, agrees to indemnify Allied "from any and all such losses, claims, suits, damages, theft and expenses which may arise out of [Allied's] authorized or permitted use of [North Shore Towers's] vehicle(s)" (*id.*). Because Allied's obligations in the Security Agreement only related to the procurement of general liability insurance for North Shore Towers—which is not an indemnification agreement—North Shore Towers did not possess an express right of indemnity through contract (*see Kinney*, 76 NY2d at 218).

There remains a triable issue as to whether indemnification existed through implication.

The right of common-law indemnification permits a party who is vicariously liable "solely" on account of another's negligence "to shift the entire burden of the loss to the actual wrongdoer" (*Trustees of Columbia Univ. v Mitchell/Giurgola Assocs.*, 492 NYS2d 371, 375 [1st Dept 1985]). But a proposed indemnitee who has itself "actually participated in the wrongdoing" cannot receive the protection of the doctrine (*id.*; *see also Naughton v City of New York*, 940 NYS2d 21, 28 [1st Dept 2012] [explaining that a party cannot establish common-law indemnification when the party itself was negligent], citing *McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377–78 [2011]).

First, Allied appears to misstate the standard for common-law indemnification by relying on *Murphy v MB Real Estate Dev. Corp.* (720 NYS2d 175 [2d Dept 2001]), a Second Department decision that does not address indemnity but rather whether a contractor assumed a duty of care to a third party (*see* Affirmation in Support of Motion for Summary Judgment at 8, ¶¶ 47–49). Those issues were previously discussed in Section I of this Order. Rather, the question of negligence for common-law indemnity is whether the negligence of the proposed

indemnitor occurred "in failing to exercise due care in the performance of their own respective obligations" (*Mitchell/Giurgola Assocs.*, 492 NYS2d at 375).

Second, questions of fact remain as to whether North Shore Towers was negligent regarding the failure to remediate the wintery conditions on its property that allegedly caused plaintiff's injuries. Questions of fact also remain as to whether Allied was negligent in the discharge of its duties to inspect the property and report any slippery conditions to North Shore Towers. If North Shore Towers is found to have acted negligently on its own regarding the remediation of wintery conditions on the premises, then its common-law indemnity claim will fail (*see id.*). If, however, North Shore Towers is found to be vicariously liable for plaintiff's injuries solely due to the negligence of Allied, North Shore Towers may possess a viable claim for common-law implication. Because this claim still presents "the existence of factual issues requiring a trial," the Court will deny Allied's motion for summary judgment (*Justinian Capital SPC*, 28 NY3d at 168).

III. Breach of Contract.

North Shore Towers also alleges that Allied breached the Security Agreement when it failed to procure general liability insurance naming North Shore Towers as an insured (Opposition to Summary Judgment at 5–6, ¶ 16). Even though Allied's Notion of Motion requests that the Court dismiss all cross-claims against it, the underlying papers do not provide any reason as to why the Court should dismiss this particular cross-claim. Because this claim still presents unresolves factual issues regarding Allied's procurement of general liability insurance, the Court will deny Allied's motion for summary judgment.

In opposition, North Shore Towers also contends that Allied may have "breached its contractual commitment to discover and report [snowy or icy] conditions to North Shore

Towers" (Opposition to Summary Judgment at 4, ¶ 10). However, this claim was not pleaded in North Shore Towers's original cross-claim against Allied (*see* NST and Charles Answer to Amended Complaint, Exhibit E), so the Court will not address that claim at this time.

CONCLUSION

Accordingly, it is hereby:

ORDERED that Allied's motion for summary judgment (mot. seq. 002) is granted to the extent that the claims of plaintiff Frank Guarino against it for negligence are dismissed; and it is further

ORDERED that Allied's motion for summary judgment (mot. seq. 002) is granted to the extent that North Shore Towers's claims for contribution are dismissed against it; and it is further

ORDERED that Allied's motion for summary judgment (mot. seq. 002) is denied with regard to North Shore Towers's claims for indemnity against it; and it is further

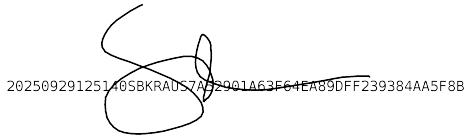
ORDERED that Allied's motion for summary judgment (mot. seq. 002) is denied with regard to North Shore Tower's claims for breach of contract against it; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that, within 20 days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes and the decision and order of this Court.



9/19/2025
DATE

SABRINA KRAUS, J.S.C.

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