

Dul v 63rd & 3rd NYC LLC

2025 NY Slip Op 33936(U)

October 8, 2025

Supreme Court, New York County

Docket Number: Index No. 158312/2018

Judge: Adam Silvera

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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. ADAM SILVERA PART 40

Justice

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CZESLAW DUL,

Plaintiff,

- v -

63RD & 3RD NYC LLC, REAL ESTATE INVERLAD USA
MANAGEMENT, LLC, HUDSON MERIDIAN
CONSTRUCTION GROUP LLC, TRIDENT GENERAL
CONTRACTING LLC, RSC GROUP LLC,

Defendant.

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63RD & 3RD NYC LLC, REAL ESTATE INVERLAD USA
MANAGEMENT, LLC, HUDSON MERIDIAN CONSTRUCTION
GROUP LLC, TRIDENT GENERAL CONTRACTING LLC

Plaintiff,

-against-

ECOSAFETY CONSULTANTS INC.

Defendant.

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INDEX NO. 158312/2018
MOTION DATE N/A
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595221/2021

The following e-filed documents, listed by NYSCEF document numbers 174-185
were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

This action arises out of a construction site accident which occurred on March 8, 2018,
when plaintiff was allegedly struck on the left hand by a metal gorilla clamp causing injuries. At
the time of the subject incident, the plaintiff, Czeslaw Dul (Plaintiff), was an employee of
defendant MCT Group LLC (MCT), a subcontractor of defendant, RSC Group LLC (RSC), who
in turn was a subcontractor of Hudson Meridian Construction Group LLC (Hudson), the general
contractor at the site, having been retained by the site owner, defendant 63 & 3rd NYC, LLC

(Owner). The clamp was dropped by an employee of Trident General Contracting, LLC (Trident) also a subcontractor at the site.

Plaintiff moved for summary judgment against owner and Hudson, alleging violations of Labor Law §§200, 240(1) and 241(6). By decision and order dated October 12, 2022, Justice Lynn R. Kotler granted summary judgment to Plaintiff as to his Labor Law §§ 240(1) and 241(6) claims but denied summary judgment as to his Labor Law § 200 claim (*see* NYSCEF doc. no. 164).

I. Arguments

The case was scheduled on March 12, 2025 for an appearance in the Part 40 for jury selection. At the conference, counsel informed the Court that the prime obstacle to settlement appears to be the dispute whether RSC owed a contractual duty to indemnify Owner. That same day, RSC filed a motion *in limine* “...for a determination that the contractual indemnification provision in the contract between Hudson Meridian Construction Group LLC and RSC Group LLC is void and unenforceable...” as violative of General Obligations Law (GOL) § 5-322.1 (*see* NYSCEF doc. no. 174). The motion was filed as a trial document and did not have a motion sequence number.

In support of its position, RSC argues that its indemnity clause with Owner attempts to impermissibly indemnify Owner from liability resulting from its negligence, in violation of the GOL; that it is the law of the case that Owner cannot seek indemnification from RSC because Owner has been held liable under Labor Law §§ 240(1) and 241(6); and that a question of fact exists as to whether Owner’s liability arose out of the execution of the work.

By notice of motion, Owner, Hudson, Trident and defendant Real Estate Inverlad USA Management, LLC (Opposing Defendants) opposed RSC’s motion *in limine*, arguing that RSC improperly seeks to dismiss a cause of action via a motion *in limine* and, in any event, that RSC’s

indemnity promise is limited to that permitted by law. Separately, Owner seeks leave to move for partial summary judgment on its cross claim for contractual indemnification against RSC, seeing an order that RSC owes the contractual duty to defend, indemnify, and hold harmless Owner and that Owner's liability for Plaintiff's injury arose out of the work subcontracted to RSC.

In reply, RSC argues that the Opposing Defendant's motion for partial summary judgment is untimely, that it requests a finding of law that is appropriate for the Court at this stage.

II. RSC's *Motion in Limine*

A motion *in limine* is not a permissible method to obtain relief dismissing a cause of action. *See Casalini v Alexander Wolf & Son*, 157 AD3d 528, 530-31 (1st Dept 2018) (holding that trial court erred in granting the defendants' motion *in limine* seeking dismissal of the plaintiff's labor law claims); *see generally State of New York v Metz*, 241 AD2d 192, 198 (1st Dept 1998). Through its motion *in limine*, RSC impermissibly seeks dismissal of Owner's cross-claim for contractual indemnification. As a motion *in limine* is an improper method to obtain summary relief, RSC's motion *in limine* is denied. *See Downtown Art Co. v Zimmerman*, 232 AD2d 270, 270 (1st Dept 1996) ("Plaintiff's motion *in limine* was an inappropriate device to obtain relief in the nature of partial summary judgment").

Moreover, if RSC's motion was brought pursuant to CPLR 3212, it would have been untimely. A motion for summary judgment must be made within 120 days of the filing of the note of issue "...except with leave of court and good cause shown." CPLR 3212 (a). The note of issue in this case was filed on November 12, 2021. Thus, the 120-day deadline expired on August 12, 2022. The motion *in limine* was filed on March 12, 2025 – 3 years and 4 months after the note of issue. *See Worden v City of Utica*, 227 AD3d 1520, 1521 (4th Dept 2024) (denying the defendant's motion for summary judgment where it was made 11 days beyond the deadline to file).

III. Owner's Motion for Leave to Move for Partial Summary Judgment

On the other hand, Owner does move for leave to move for partial summary judgment on its cross claim for contractual indemnification against RSC. Owner's notice of motion was filed on March 21, 2025 – 3 years, 4 months, and 9 days after note of issue was filed. Owner argues that the good cause for leave to move for partial summary judgment is that the parties agree that the issue of RSC's duty to indemnify is an impediment to settlement. The Court of Appeals in *Brill v City of New York*, *Brill v City of New York*, 2 NY3d 648, 652 (2004) set forth the standard for a showing of "good cause" pursuant to CPLR 3212 (a):

We conclude that "good cause" in CPLR 3212(a) requires a showing of good cause for the delay in making the motion—a satisfactory explanation for the untimeliness—rather than simply permitting meritorious, nonprejudicial filings, however tardy. That reading is supported by the language of the statute—only the movant can *show* good cause—as well as by the purpose of the amendment, to end the practice of eleventh-hour summary judgment motions. No excuse at all, or a perfunctory excuse, cannot be "good cause"... it is now clear that "good cause" means good cause for the delay, and movants will develop a habit of compliance with the statutory deadlines for summary judgment motions rather than delay until trial looms.

The instant motions are precisely the sort that the Court of Appeals instructed the courts not to tolerate. Owner has not proffered any reason for its delay to move for summary judgment within the prescribed time period. Instead, it simply asserts that the moving parties agree that a determination would be beneficial (although the parties disagree as to the manner in which to bring the motions).

As Owner has not given any explanation for the untimeliness of the motion, its motion seeking leave to move for partial summary judgment on its cross claim for contractual indemnification against RSC is denied. The Court in *Brill*, reversing the grant of an untimely summary judgment motion where no good cause was shown, directs the next steps, where "...the

case returned to the trial calendar, where a motion to dismiss after plaintiff rests or a request for a directed verdict may dispose of the case during trial.” *Brill* at 654.

IV. Conclusion


Accordingly, it is

ORDERED that RSC’s motion *in limine* is denied; and it is further

ORDERED that Owner’s motion seeking leave to file partial summary judgment is denied; and it is

ORDERED that the matter is adjourned to November 18, 2025 for a pre-trial conference in Part 40 in Room 252 at 60 Centre Street, New York, New York.

The foregoing constitutes the decision and order of the Court.

<u>10/8/2025</u> DATE	 ADAM SILVERA, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE