

**Port Auth. of N.Y. & N.J. v Skanska USA Bldg. Inc.**

2025 NY Slip Op 34121(U)

October 27, 2025

Supreme Court, New York County

Docket Number: Index No. 153450/2025

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

-----X

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
and LAGUARDIA GATEWAY PARTNERS

Plaintiffs,

- v -

SKANSKA USA BUILDING INC., and SKANSKA USA CIVIL
NORTHEAST INC.,

Defendants.

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INDEX NO. 153450/2025

MOTION DATE 04/28/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after a final submission date of August 7, 2025, Defendants Skanska USA Building Inc. ("Skanska Building") and Skanska USA Civil Northeast Inc.'s ("Skanska Civil") (collectively "Defendants" or "Skanska") motion to dismiss Plaintiffs Port Authority of New York and New Jersey ("Port Authority") and LaGuardia Gateway Partners' (LaGuardia") (collectively "Plaintiffs") Complaint and for sanctions is granted in part and denied in part. Plaintiffs' cross motion for summary judgment on their claims for common law indemnification against Defendants is denied.

I. Background

On January 21, 2018, Quentin Mayo ("Mayo"), an ironworker employed by Skanska, was injured on a construction site at LaGuardia. He sued Plaintiffs for personal injuries and was awarded summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim by Hon. Alison Y. Tuitt on April 8, 2022 (the "Labor Law Action"). Ultimately, Plaintiffs settled

their claims with Mayo, which was funded fully by their insurer, Certain Underwriters at Lloyd's of London ("Lloyd's") (NYSCEF Docs. 4 and 15 at ¶ 63).

Separately, in the Southern District of New York, Skanska's insurers, Zurich American Insurance Company and American Zurich Insurance Company (collectively "Zurich") sued Lloyds and Arch Insurance Company ("Arch") seeking a declaration that the anti-subrogation rule precludes Lloyd's from commencing a common law indemnification or contribution claim against Skanska-Walsh Joint Venture (the "Declaratory Judgment Action"). Hon. Paul Oetken granted Zurich summary judgment finding the anti-subrogation rule bars Lloyd's from causing its insureds, Port Authority and LaGuardia, from suing Skanska, which is also Lloyd's insured, for common law indemnification and contribution (*see Zurich American Ins. Co v. Certain Underwriters at Lloyd's of London*, 627 F.Supp.3d 325 [SDNY 2022]). On appeal, the Second Circuit affirmed (*see Zurich American Ins. Co v. Certain Underwriters at Lloyd's of London*, 2023 WL 8594052 [2d Cir. 2023]). In this action, Plaintiffs sue Skanska for common law indemnification. Skanska moves to dismiss and for sanctions, arguing that the Complaint is barred by *res judicata* and collateral estoppel pursuant to the Southern District of New York and Second Circuit's decisions in the Declaratory Judgment Action. Plaintiffs oppose and cross move for summary judgment.

## II. Discussion

Defendants' motion to dismiss is granted but their motion for sanctions is denied. As held by the Court of Appeals, a valid final judgment bars future actions between the same parties once a claim is brought to a final conclusion, and "all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." (*see Simmons v Trans Express Inc.*, 37 NY3d 107, 111 [2021] citing *O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). This rule exists "to ensure finality, prevent vexatious

litigation and promote judicial economy” (*Xiao Yang Chen v Fischer*, 6 NY3d 94, 100 [2005]). To determine whether two claims arise out of the same transaction or series of transactions, the Court must determine whether they “are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage” (*Xiao, supra* at 100-101 quoting Restatement [Second] of Judgments §24[2]).

Here, the doctrine of *res judicata* applies to bar Plaintiffs’ Complaint. Plaintiffs admit that the real party in interest in this lawsuit is their insurer, Lloyd’s, who fully funded the settlement between Plaintiffs and Mayo. Thus, the common law indemnification claim is a subrogation claim whereby Lloyd’s seeks to recover the amounts paid in settlement on behalf of Plaintiffs from Skanska, who Lloyd’s previously insured. However, the Second Circuit was very clear that the claims being asserted in this action are barred by the anti-subrogation rule. The Second Circuit stated:

“Lloyd's insures Skanska under the general liability policy. That policy, through the insured contract provision, covers Skanska for the obligation it assumed in the contract to indemnify LGA and Port Authority for losses resulting from third-party claims for bodily injury like the one underlying the present action. Thus, Lloyd's cannot subrogate against Skanska—its own insured—for losses arising from the underlying suit, exactly the risk for which Lloyd's insures Skanska. What Lloyd's proposes is precisely what the anti-subrogation rule prohibits. Straightforward application of the rule bars the claim”

(*see Zurich American Ins. Co v. Certain Underwriters at Lloyd’s of London*, 2023 WL 8594052 at \*3 [2d Cir. 2023]). The Second Circuit further stated “[n]or can an insurer bypass the anti-subrogation rule by asserting a common law indemnity claim against its insured when it only covers the insured for contractual indemnity claims” (*id.* at \*2). The Southern District of New York was similarly clear, stating: “[t]he sole issue before the Court is whether the anti-subrogation rule bars Lloyd’s from causing its insureds, [LaGuardia] and Port Authority, to sue its other named

insured, Skanska, for common law indemnification or contribution” (*see Zurich American Ins. Co v. Certain Underwriters at Lloyd’s of London*, 627 F.Supp.3d 325, 328 [SDNY 2022]). The Southern District of New York answered that question in the negative, declaring “as a matter of New York law, that the anti-subrogation rule precludes Lloyd’s from commencing a claim for common law indemnification or contribution against Skanska.” (*Zurich, supra* at 330).

Plaintiffs’ arguments that they are only precluded from asserting contractual indemnification claims against Skanska are contrary to the abundantly clear holdings of both the Southern District of New York and the Second Circuit. Plaintiffs cannot relitigate the issue of whether they can seek common law indemnification from Skanska for a settlement fully funded by Lloyd’s, which provided coverage for Mayo’s injuries to both Plaintiffs and Defendants and is barred by the anti-subrogation rule. Therefore, Skanska’s motion to dismiss is granted.

However, Defendants’ motion for sanctions is denied. Whether to impose sanctions is generally left to the discretion of the Court (*Flowers v 73<sup>rd</sup> Townhouse, LLC*, 227 AD3d 568 [1st Dept 2024]). While the Court agrees with Defendants that the decisions of the Southern District of New York and the Second Circuit clearly bar this action, in the interest of finality and putting the parties’ multiple rounds of litigation to rest, and because this litigation was not protracted but resolved on a relatively simple motion to dismiss, the Court declines to impose sanctions.

Plaintiffs’ cross motion for summary judgment is denied. First, issue was not joined as Defendants have yet to file an Answer, making the motion procedurally improper (*Adago v Sy*, 205 AD3d 602, 603 [1st Dept 2022]; *Leff v Leff*, 182 AD3d 401 [1st Dept 1992] [rule prohibiting summary judgment prior to joinder of issue is strictly adhered to]). Moreover, the motion is academic as the Complaint is barred pursuant to CPLR 3211(a)(5).

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiffs' Complaint pursuant to CPLR 3211(a)(5) is granted, but Defendants' motion for sanctions is denied; and it is further

ORDERED that Plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that within ten days of entry, counsel for Defendants 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.

<u>10/27/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE