New York City Hous. Auth. v Liro Architects & Planners, P.C.
2025 NY Slip Op 34210(U)
November 3, 2025
Supreme Court, New York County
Docket Number: Index No. 452035/2021
Judge: Kathleen Waterman-Marshall

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

----------X

NEW YORK CITY HOUSING AUTHORITY,

Plaintiff,

- v -

LIRO ARCHITECTS AND PLANNERS, P.C.,

Defendant.

----------X

INDEX NO. 452035/2021

MOTION DATE 12/17/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

LIRO ARCHITECTS AND PLANNERS, P.C.

Third-Party Plaintiff,

-against-

GENESYS ENGINEERING, PC

Third-Party Defendant.

----------X

Third-Party
Index No. 595786/2022

LIRO ARCHITECTS AND PLANNERS, P.C.

Second Third-Party Plaintiff,

-against-

DELRIC CONSTRUCTION CO., INC.,, TDX CONSTRUCTION CORPORATION, TRU-VAL ELECTRIC CORPORATION, APTIM, CSA GROUP

Second Third-Party Defendants.

----------X

Second Third-Party
Index No. 595749/2024

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 42, 47, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and following oral argument on July 8, 2025, the motion by Second Third-Party Defendant CSA Group ("CSA") for an order, pursuant to CPLR §3211(a)(1) and (7), dismissing the second third-party complaint as against it, is granted.

Brief Background

The main and third-party actions arise out of a significant power outage at the Rangel Houses in Manhattan due to failed electrical service panels designed and specified by defendant/third-party and second third-party plaintiff LIRO Architects + Planners, P.C. ("LIRO"). In the main complaint, plaintiff New York City Housing Authority ("NYCHA") seeks damages in the sum of $4,769,119 from LIRO under two legal theories: breach of contract and professional malpractice. In the second third-party complaint, LIRO seeks judgment over and against CSA, as well as second third-party defendants TDX Construction Co., Inc. ("TDX"), Delric Construction Co., Inc. ("Delric"), Tru-Val Electric Corporation ("Tru-Val"), and Aptim, under the theories of common law contribution and indemnification.

In pertinent part, the main complaint alleges that: on April 2, 2012, NYCHA and LIRO entered into a contract (No. AE1203155) for architectural and engineering services on an "as-needed" or "requirements" basis at various NYCHA developments subject to NYCHA's Task Orders and Supplemental Task Orders ("the Agreement"); under the Agreement, LIRO agreed to indemnify NYCHA for losses and damages arising from any "errors, omissions or negligent acts" by LIRO in the performance of its duties; starting on October 2013, NYCHA issued to LIRO Task Orders 29, 37, 40, and 60, which required LIRO to perform architectural, mechanical, engineering and construction administration service for the renovation of mechanical, electrical and plumbing systems at the Rangel Houses damaged by Hurricane Sandy; in May 2014, NYCHA contracted with TDX to perform construction management services in connection with NYCHA's Hurricane Sandy Restoration Program ("the Restoration Program"); and in October 2016, NYCHA contracted with Delric to perform labor and materials for the Restoration Program, including that required by LIRO's specifications and drawings.

The complaint further alleges that: on June 18, 2018, the Rangel Houses sustained power outages when "electrical power was switched over to the new electrical service panels LIRO designed and specified for installation"; the investigation by TDX and Delric revealed that the power outages were caused because "the electrical service panels and feeders installed in accordance with LIRO's designs. . . were undersized"; "due to the deficiencies in LIRO's design, the load on the electrical system at Rangel Houses on June 18, 2018 caused the fuses in the distribution board to overheat resulting in power outages"; and "upon information and belief, LIRO relied upon archival drawings to design the electrical service panels and feeders" and "failed to perform a site inspection to ascertain whether the archival drawings accurately reflected existing conditions and dimensions." Upon those factual allegations, and "as a result of LIRO's errors and omissions," NYCHA alleges that it "has not received the value for the money it paid" to LIRO under the Agreement, and that is "has incurred damages, including but not limited to the cost and expense of redesigning and repairing electrical work at Rangel Houses and costs for additional labor and services associated therewith." As noted, NYCHA seeks to recover the sum of $4,769,119 under the alternative theories of breach of contract and professional malpractice.

In its second third-party complaint, LIRO alleges, as is here relevant, that CSA "knew or should have known that power outages could potentially occur" at Rangel House but "did nothing to rectify said conditions," and that NYCHA's damages were caused by its own conduct or "CSA in its failure to design, install or inspect electrical service panels and feeders" at Rangel Houses. Upon those allegations, LIRO asserts that CSA is responsible for its proportionate share of liability

for NYCHA's damages under the theory of common law contribution and that LIRO's own negligence and culpable conduct is "merely constructive, technical, imputed, or vicarious," and that CSA is "bound to indemnify" LIRO.

CSA now moves to dismiss the second third-party complaint pursuant to CPLR § 3211(a)(1) and (7). In the main, CSA argues that LIRO is not entitled to: contribution because NYCHA's main claim is in the nature of contract and not tort and NYCHA seeks solely economic losses; and indemnification because LIRO itself was negligent and is not being sued on a theory of vicarious liability. In opposition, LIRO contends, in the main, that dismissal is premature as discovery is needed on negligence issues; CSA may be subject to tort liability for NYCHA's damages thus entitling it to contribution; and LIRO is entitled to indemnification because Aptim or Shaw (with which CSA contracted) may have delegated to CSA duties related to the electrical panels.

Discussion

The law on CPLR § 3211(a)(7) dismissal motions is well-known and simply stated. In assessing whether the complaint states a cause of action, it is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference *(see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]). Similarly, a motion to dismiss based on documentary evidence under CPLR 3211(a)(1) is appropriate only if the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law (*Mark Hampton, Inc.*, 173 AD2d at 221).

LIRO is Not Entitled to Contribution from CSA

LIRO brings its contribution claim under CPLR § 1401, which provides, in pertinent part, that "two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought" (CPLR § 1401). It is not necessary that the injured plaintiff have a "direct right of recovery" against a third-party tortfeasor from whom the defendant seeks contribution (*Raquet v Braun*, 90 NY2d 177, 182 [1997] ["defendant may seek contribution from a third party even if the injured plaintiff has no direct right of recovery against that party, either because of a procedural bar or because of a substantive legal rule"]; *Kaufman v P&G Brokerage Inc.*, 82 Misc3d 887, 903 [Sup Ct Kings County 2024] ["The legislative history makes clear, and indeed we have recognized, that the statute applies not only to joint tort-feasors, but also to concurrent, successive, independent, alternative, and even intentional tort-feasors"] [citing *Board of Educ. of Hudson City School Dist. v Sargent, Webster, Crenshaw & Folley*, 71 NY2d 21, 27 [1987]).

The only requirement for a successful contribution claim is that the contributing party's breach of duty – negligence – contributed to the injury for which contribution is sought (*Raquet*, 90 NY2d at 183 ["critical requirement for apportionment by contribution under CPLR article 14 is that 'the breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought'] [internal citations omitted]; *Sommer v Fed. Signal Corp.*, 79 NY2d 540, 556-557 [1992] [contribution ensures injured plaintiff's "loss is more equitably distributed among the culpable parties, according to their degree of fault. The goal of contribution, as announced in *Dole* and applied since, is fairness to tortfeasors who are jointly liable."]).

It follows therefore that purely economic losses resulting from a breach of contract do not constitute injury to property within the meaning of CPLR § 1401 (*id.; Children's Corner Learning Ctr. v A. Miranda Contr. Corp.*, 64 AD3d 318, 323 [1st Dept 2009] ["In the cases which have followed since the Court of Appeals decided *Dole v Dow Chem. Co.* and this statute was enacted, it is well established that 'purely economic loss resulting from a breach of contract does not constitute injury to property'"]. Indeed, apportionment under CPLR § 1401 where the claim arises "solely from breach of contract would not only be at odds with the statute's legislative history, but do violence to settled principles of contract law which limit a contracting party's liability to those damages that are reasonably foreseeable at the time the contract is formed" (*Children's Corner Learning Ctr.*, 64 AD3d at 323-324 [citing *Board of Educ. of Hudson City School Dist. v Sargent, Webster, Crenshaw & Folley*, 71 NY2d 21, 26 (1987)]).

Here, CSA did not owe a duty to NYCHA or LIRO. CSA did not have a contract with NYCHA or LIRO. Indeed, if CSA did have a duty to NYCHA, it presumptively would have been named as a direct defendant in the main action.[1] Thus, even assuming the truth of LIRO's allegation that CSA failed "to properly design, install or inspect electrical service panels and feeders" at Rangel Houses, such alleged failures arise out of CSA's contractual obligations to Aptim and/or non-party Shaw for its work performed at the Rangel Houses and do not sound in negligence or assert a duty outside the contract (*Sommer*, 79 NY2d at 556-557 [contribution applies only to tortfeasors who are jointly liable]; *Children's Learning Ctr.*, 64 AD3d 318). As the Court of Appeals has made clear, "where plaintiff is essentially seeking enforcement of the bargain, the action should proceed under a contract theory and not the tort theory" [*Dormitory Auth. v Samson Constr. Co.*, 30 NY3d 704, 711 [2018]). For this reason alone, LIRO's contribution claim must be dismissed.

Moreover, NYCHA's damages are exclusively economic in nature; thus, contribution does not lie (*Children's Learning Ctr.*, 64 AD3d 318). NYCHA clearly and unequivocally alleges that it "has not received the value for the money it paid" to LIRO under the Agreement and that its damages include "the cost and expense of redesigning and repairing electrical work at Rangel Houses and costs for additional labor and services associated therewith." In other

[1] The record reveals that NYCHA could not assert that it is a third-party beneficiary of the contract between Shaw and CSA as there is no language indicating as much in that contract. Under New York law, absent express contractual language indicating an intent to benefit a third party, that party is merely an incidental beneficiary with no enforcement rights (*see Port Chester Elec. Constr. Corp. v Atlas*, 40 NY2d 652, 655 [1976]; *Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 66 NY2d 38, 45 [1985]).

words, NYCHA seeks only to be returned to the position it would have occupied had LIRO not breached the agreement (*Children's Corner Learning Ctr.*, 64 AD3d at 324). Since the "touchstone" for determining whether a contribution claim lies is the measure of damages sought in the underlying complaint (*id.*), and since NYCHA seeks the exact same measure of damages – $4,769,119 – on both its breach of contract and professional malpractice claims, LIRO is not entitled to contribution from CSA (*id.* ["That Loheac seeks the same measure of damages for breach of contract as for professional malpractice is confirmed by the fact that the specific damages sought in the fifth cause of action for breach of contract are substantially similar to the specific damages sought in the sixth cause of action for professional malpractice.']).

LIRO's reliance on *Tower Bldg. Restoration v 20 E. 9th St. Apt. Corp.*, 295 AD2d 229 [1st Dept 2002], is misplaced as the contribution claims therein were based on "traditional tort damages" stemming from physical property damage to the floor and roof caused by the architect, unlike the instant case, where damages are purely economic.

LIRO is Not Entitled to Indemnification from CSA

Common law indemnification allows a party compelled to pay damages due to the wrong of another to recover from the true wrongdoer (*D'Ambrosio v City of New York*, 55 NY2d 454, 460 [1982]; *McDermott v. City of New York*, 50 NY2d 211, 217 [1980]; *17 Vista Fee Assoc. v Teachers Ins. and Annuity Ass'n of Am.*, 259 AD2d 75, 80 [1st Dept 1999] ["In the classic case, implied indemnity permits one held vicariously liable solely on account of the negligence of another to shift the entire burden of the loss to the actual wrongdoer."]). For those who are vicariously liable only, the party seeking indemnity must have delegated exclusive responsibility for the duties giving rise to the loss to the party from whom indemnification is sought [*see 17 Vista Fee Assoc.*, 259 AD2d at 80 [indemnification permits a party which is vicariously liable to shift liability to party to which duties delegated]). However, where the party seeking indemnity is alleged to have engaged in wrongdoing, indemnification is unavailable (*D'Ambrosio*, 55 NY2d at 461 ["One who was himself actively negligent could not, of course, receive the benefit of this doctrine"]; *Trustees of Columbia Univ. v. Mitchell/Giurgola Assocs.*, 109 AD2d 449, 453 [1st Dept 1985]).

LIRO alleges that CSA failed to perform its work at the Rangel Houses per its contract with Aptim and/or Shaw in that it failed "to design, install or inspect electrical service panels and feeders" and "knew or should have known" that there would be power outages. Even if LIRO's allegations are true, they do not form a basis for an indemnification claim against CSA. First, NYCHA asserts direct claims against LIRO based upon LIRO's own failures in the performance of its work at Rangel Houses giving rise to independent breach of contract and professional malpractice claims (*see* (*Trump Vil. Section 3, Inc. v. NY State Hous. Agency*, 307 AD2d 891 [1st Dept 2003] ["Indemnification also does not lie in this case because plaintiff has brought direct claims against the codefendants for breach of contract and malpractice. Accordingly, since 'liability against any of these defendants would be based upon such defendant's own participation in the acts giving rise to the loss, that is, as an actual wrongdoer.'"] [citing *Trustees of Columbia Univ.*, 109 AD2d at 453-454]). Second, LIRO does not allege in the second third-party complaint that, vis-à-vis NYCHA's claims, it is free of fault and culpable conduct. Third, and finally, NYCHA does not allege in the main complaint that LIRO is vicariously liable for CSA's conduct – indeed, there could not be such an allegation as LIRO is not in contract with CSA such that LIRO

could have delegated to CSA its duties vis-à-vis the design of the subject defective electrical panels (*see generally Bd of Ed of the City of New York v Mars Assocs. Inc.*, 133 AD2d 800, 801 [2d Dept 1987] [defendant's cross-claims for indemnification fail because no contract exists between them). Accordingly, even assuming the truth of the allegations of the second third-party complaint and giving it liberal construction, LIRO's indemnification claims must be dismissed.

Dimissal is Not Premature

CPLR § 3211(d) provides that, where a motion to dismiss is made prior to discovery and it is shown that "facts essential to justify opposition may exist but cannot then be stated," the motion may be denied. However, the "mere hope that discovery may reveal facts essential to justify opposition does not warrant denial of the motion" (*Long Island Med. Anesthesiology, P.C. v Rosenberg Fortuna & Laitman, LLP*, 191 AD3d 864, 866 [2d Dept 2021])

LIRO contends that dismissal is premature as there has been no discovery on the issue of CSA's work at the Rangel Houses and whether such work caused or contributed to NYCHA's damages. However, as noted above, CSA's alleged failures would not change the result and form a proper basis for valid contribution and indemnification by LIRO. CSA's dismissal arguments are grounded in documentary evidence and legal principles, specifically the economic loss doctrine which does not turn on disputed facts but on the nature of the relief sought by NYCHA. Moreover, LIRO does not identify any specific facts that are within CSA's exclusive knowledge or show how such facts would materially alter the outcome of this motion. Courts have routinely rejected arguments of prematurity where the party opposing dismissal fails to demonstrate the existence of evidence that would support its claims (*see Mezger v Windsor Owners Corp.*, 175 AD3d 597, 598 [2d Dept 2019]; *Amico v Melville Volunteer Fire Co., Inc.*, 39 AD3d 784, 785 [2d Dept 2007]). Consequently, CSA's dismissal motion is not premature.

Accordingly, it is

ORDERED that the motion by second third-party defendant CSA Group to dismiss the second third-party complaint as against it is granted.

20251103152142KCWATER2E1CAC40A26DC42E09549E4FC5FC10F6D

11/3/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

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**