

<b>Chubb Natl. Ins. Co. v C-Squared Contr., Inc.</b>
2025 NY Slip Op 34270(U)
November 7, 2025
Supreme Court, New York County
Docket Number: Index No. 161471/2024
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

-----X

CHUBB NATIONAL INSURANCE COMPANY,

Plaintiff,

- v -

C-SQUARED CONTRACTING, INC., ASSOCIATED  
MECHANICAL, INC., LTB MECHANICAL CORP.,

Defendants.

-----X

C-SQUARED CONTRACTING, INC.

Plaintiff,

-against-

CURTIS LANE, STACEY LANE

Defendants.

-----X

LTB MECHANICAL CORP.

Plaintiff,

-against-

B & H RESTORATION, INC., TRI-POWER ENGINEERING,  
LLC

Defendants.

-----X

INDEX NO. 161471/2024  
MOTION DATE 04/07/2025  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595053/2025

Second Third-Party  
Index No. 595229/2025

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for DISMISS.

Second third-party defendant Tri-Power Engineering, LLC (Tri-Power) moves, pursuant to CPLR 3211(a)(1), (a)(3), and (a)(7), to dismiss the second third-party complaint of LTB Mechanical Corp. (LTB). LTB opposes.

## I. BACKGROUND FACTS

This action arises from water damage that occurred in February 2023 at a condominium unit owned by non-party insureds for which plaintiff Chubb National Insurance Company paid insurance proceeds, allegedly from a frozen pipe that burst and leaked (NYSCEF 17). Plaintiff, as subrogee, commenced this action against the general contractor, plumber, and LTB, the HVAC installer responsible for the unit's construction (NYSCEF 1).

LTB then commenced this second third-party action against Tri-Power, a mechanical engineering company that prepared HVAC and ventilation drawings for the unit, asserting that Tri-Power's negligent design and inspection caused or contributed to the incident at issue (NYSCEF 17). The second third-party complaint seeks contractual indemnification, common-law indemnification, contribution, and damages for negligent engineering (*id.*).

In 2018, the unit owners retained Tri-Power to provide mechanical, electrical, and plumbing design services for the renovation of their residence (NYSCEF 29). The written proposal, dated April 2018, states that Tri-Power would prepare design drawings and specifications under the direction of the unit-owner's architect and provide limited site observation services (*id.*). The accompanying terms and conditions specify that Tri-Power would not supervise construction, control the means or methods of any contractor's work, or assume responsibility for inspections or installation, and that no third-party rights were created by the agreement (*id.*).

Tri-Power's principal affirms that the firm had no contract or communication with LTB, performed no installation or inspection of the HVAC or plumbing systems, and provided its services exclusively to the unit owners (NYSCEF 47). A Department of Buildings record shows that the design work was approved in August 2021 (NYSCEF 34).

## II. PARTY CONTENTIONS

Tri-Power contends that it had no contractual relationship with LTB and therefore no duty to it. It maintains that its work was limited to preparing mechanical drawings for the unit owners and that it was not involved in LTB's installation or maintenance of the HVAC system. Tri-Power contends that its contract and invoice show it had no obligation to indemnify LTB, that any claim against it is untimely because its work was completed more than three years before this action was filed, and that LTB is attempting to shift responsibility for its own negligent work.

LTB opposes, arguing that Tri-Power's designs and recommendations may have contributed to the conditions that caused the pipe to freeze and burst. It asserts that Tri-Power conducted site visits and made changes to the plans that affected air circulation, and that further discovery is needed to determine Tri-Power's role. LTB also disputes Tri-Power's timeline and argues that its claims were filed within the applicable limitations period.

Tri-Power responds that its limited design work could not have caused the water leak and that LTB's allegations are speculative. It maintains that its scope of work ended long before the incident and that LTB alone was responsible for the installation and resulting damage.

## III. DISCUSSION

### A. Capacity

While Tri-Power argues that LTB lacks the capacity to maintain this second third-party action, it does not make any substantive arguments regarding this claim in either its memorandum in support of its motion or in its reply memorandum. It has thus failed to demonstrate a lack of capacity defense.

B. Contractual Indemnification

Tri-Power contends that the contractual-indemnification claim fails because it had no contract with LTB and its agreement with the unit owners contained no indemnification provision.

A claim for contractual indemnification must be founded on a clear and unmistakable promise by one party to indemnify another (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274–275 [2007]; *Shah v 20 E. 64th St. LLC*, 230 AD3d 405, 410–411 [1st Dept 2024]). Indemnity provisions are strictly construed so as not to impose obligations the parties did not intend, and no duty to indemnify will be implied from silence or ambiguity (*Hooper Assocs. v AGS Computers*, 74 NY2d 487, 491–492 [1989]). In the absence of privity or a written contract containing an indemnification clause running to the claimant, no cause of action for contractual indemnification exists (*Hooper Assocs., Ltd.*, 74 NY2d at 487); *Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774 [1987]).

The record establishes that Tri-Power's contract was solely with the unit owners, and it contained no language promising to defend or indemnify any contractor. LTB was neither a party to nor a third-party beneficiary of that contract, and no separate agreement between LTB and Tri-Power has been alleged. Because the documentary evidence demonstrates that Tri-Power owed no contractual duty to indemnify LTB, the claim for contractual indemnification is dismissed.

C. Common-Law Indemnification

Common-law indemnification permits one held vicariously liable for another's wrongdoing to shift the entire loss to the actual wrongdoer (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 375 [2011]), and arises only where the party seeking indemnity was not itself

negligent (*id.* at 374-375; *Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]). A party seeking indemnification must show not only that it was free from fault but also that the proposed indemnitor's negligence contributed to the injury (*McCarthy*, 17 NY3d at 374; *Lewis-Moore v Cloverleaf Tower Hous. Dev. Fund Corp.*, 26 AD3d 292 [1st Dept 2006]). The doctrine is equitable in nature and applies only when the indemnitee's liability is purely vicarious, such as that arising from a statutory or contractual non-delegable duty (*McCarthy*, 17 NY3d at 375).

Here, the second third-party complaint alleges that LTB performed the HVAC installation that caused the leak, making its alleged liability direct rather than vicarious. LTB does not claim to have been fault-free or held liable solely by virtue of a nondelegable duty. Nor does it allege that Tri-Power exercised control over its work or owed a duty to indemnify it by operation of law. Because the pleadings assert active negligence against LTB and do not describe a purely vicarious relationship, the common-law indemnification claim is dismissed

#### D. Negligence

A claim against a professional for negligent performance of services is governed by the three-year statute of limitations for professional malpractice under CPLR 214(6), which begins to run upon completion of the professional's work, not upon discovery of the injury (*Sage Sys., Inc. v Liss*, 39 NY3d 27, 31–32 [2022]; *McKinsey & Co., Inc. v R.M. Kliment & Frances Halsband, Architects*, 3 NY3d 538, 541–542 [2004]). The statute applies to engineers and design professionals regardless of whether the claim is pleaded in contract or tort and regardless of the type of resulting injury (*McKinsey & Co.*, 3 NY3d at 541–542). CPLR 214(4), which governs injury to property, does not apply where the gravamen of the claim is professional negligence rather than damage to property per se (*Sage Sys.*, 39 NY3d at 31–32).

The allegations against Tri-Power concern its design and engineering services—specifically, the preparation of HVAC plans and site recommendations for the unit owners. These are professional services subject to the three-year limitations period under CPLR 214(6). The record shows that Tri-Power completed its work by August 2021, when it filed its completion documents with the DOB. The second third-party complaint was filed more than three years later, on December 5, 2024. Because the claim accrued upon completion of Tri-Power’s services and not upon the subsequent February 2023 leak, the negligence claim is time-barred. Although LTB characterizes its claim as one for injury to property, the allegations arise entirely from Tri-Power’s professional conduct, not from an independent property-damage tort. The cause of action for negligence is therefore dismissed.

E. Contribution

Contribution is available among joint tortfeasors who share responsibility for the same injury to the extent each party’s conduct contributed to the damage (*Raquet v Braun*, 90 NY2d 177, 183 [1997]; *Trump Vil. Section 3, Inc. v New York State Hous. Fin. Agency*, 307 AD2d 891 [1st Dept 2003]). A claim for contribution may be maintained even if the party seeking it has not yet paid a judgment, provided that both parties owed a duty to the injured party and a breach of that duty contributed to the same harm (*Raquet*, 90 NY2d at 182-183). To state a contribution claim against a party performing services under a contract, the moving party must show that the alleged tortfeasor owed an independent duty of care to the plaintiff outside the contract itself (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138–140 [2002]). Such a duty may arise if the contractor launched an instrument of harm, if the plaintiff detrimentally relied on the contractor’s performance, or if the contractor entirely displaced another’s duty to maintain the premises safely (*id.* at 140).

Tri-Power argues that as LTB’s negligence claim against it must be dismissed, so too must be its contribution claim. LTB contends that Tri-Power may be held liable in contribution if it breached a duty to plaintiff.

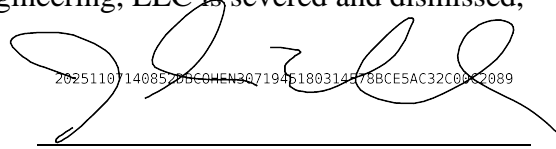
Here, however, plaintiff has not asserted a negligence claim against Tri-Power, and the only entity asserting the claim is LTB, but the claim is time-barred, as discussed above. Therefore, as there no longer remains a viable negligence claim against Tri-Power, LTB’s claim for contribution against it is also no longer viable (cf. Century Tower Assocs. NY LLC v Feld, Kaminetzsky & Cohen, 214 AD3d 434, 435 [1st Dept 2023] [dismissal of contribution cross-claim denied, as while plaintiff’s claims against codefendants may ultimately lack merit or be barred by statute of limitations, claims still pending, and thus “the necessary predicate tort liability for contribution remains in this case”]).

Finally, while LTB notes that Tri-Power’s supporting affidavit is unsigned and unsworn, the defect is immaterial, as the motion is otherwise supported by admissible documentary evidence sufficient for review.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of second third-party defendant Tri-Power Engineering, LLC to dismiss the second third-party complaint against it is granted in its entirety, and the second third-party complaint as asserted against Tri-Power Engineering, LLC is severed and dismissed, and the clerk is directed to enter judgment accordingly.



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11/7/2025  
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<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