

Caguana v 111 W. 57th Prop. Owner, LLC

2025 NY Slip Op 34363(U)

November 14, 2025

Supreme Court, New York County

Docket Number: Index No. 158637/2016

Judge: Richard Tsai

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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. RICHARD TSAI PART 21

Justice

-----X

JORGE CAGUANA and ROSA ARQUI,
Plaintiffs,

- v -

111 WEST 57TH PROPERTY OWNER, LLC, and
JDS CONSTRUCTION GROUP, LLC,
Defendants.

-----X

111 WEST 57TH PROPERTY OWNER, LLC, JDS
CONSTRUCTION GROUP, LLC

Third-Party Plaintiffs,

-against-

SAFETY & QUALITY PLUS, INC., and
SITE SAFETY LLC,

Third-Party Defendants.

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INDEX NO. 158637/2016

MOTION DATE 10/28/2025,
10/28/2025

MOTION SEQ. NO. 013 014

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595876/2021

The following e-filed documents, listed by NYSCEF document numbers (Motion 013) 555-571
were read on this motion to/for SEVER ACTION.

The following e-filed documents, listed by NYSCEF document numbers (Motion 014) 517-532
were read on this motion to/for SEVER.

Upon the foregoing documents, it is **ORDERED** that the motion to sever the third-party
action by third-party defendant Site Safety LLC (Seq. No. 13) is **GRANTED** without
opposition; and it is further

ORDERED that the first, third, and fourth causes of action against third-party
defendant Site Safety, LLC of the third-party complaint are severed and dismissed, with
costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of
costs, and the Clerk is directed to enter judgment in favor of Site Safety, LLC and
against defendants/third-party plaintiffs accordingly; and it is further

ORDERED that the motion to sever the third-party action by third-party defendant Safety & Quality Plus, Inc. (Seq. No. 14) is **GRANTED** without opposition; and it is further

ORDERED that the first, third, and fourth causes of action against third-party defendant Safety & Quality Plus, Inc. of the third-party complaint are severed and dismissed, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, and the Clerk is directed to enter judgment in favor of Safety & Quality Plus, Inc. and against defendants/third-party plaintiffs accordingly; and it is further

ORDERED that, upon the court's own initiative, the cross-claims of Safety & Quality Plus, Inc. against defendants/third-party plaintiffs for contribution, common-law indemnification and contractual indemnification, and the counterclaims of Site Safety, LLC against defendants/third-party plaintiffs for contribution and common-law indemnification, are severed and dismissed without prejudice; and it is further

ORDERED that the caption of this action is hereby amended to read as follows:

JORGE CAGUANA and ROSA ARQUI,

Plaintiffs,

against

111 WEST 57TH PROPERTY OWNER, LLC, and
JDS CONSTRUCTION GROUP, LLC,

Defendants.

and it is further

ORDERED that counsel for plaintiffs shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*¹ (accessible at the "E-Filing" page on the court's website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf>).

¹ Pursuant to Section J, in order for the Clerk of the General Clerk's Office to effectuate this order, the movant must e-file a copy of the order "using the NYSCEF document type 'Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order'" and the filer must provide "as additional information (in the 'Additional Document Information' field) a brief description of the type of order being submitted (e.g., 'Order of Consolidation' . . .) (*id.*).

On September 27, 2021, defendants commenced a third-party action against defendants Safety & Quality Plus, Inc. (SQP) and Site Safety LLC (Site Safety) (see Exhibit G in support of Motion Seq. No. 13, third-party complaint [NYSCEF Doc. No. 563]; see also Exhibit G in support of Motion Seq. no. 14 [NYSCEF Doc No. 525]). The third-party complaint alleged four causes of action against SQP and four causes of action against Site Safety, under the theories of: (1) contractual indemnification; (2) breach of contract; (3) common-law indemnification and (4) contribution (see *id.*).

On or about November 19, 2021, SQP answered the third-party complaint, asserting, among other things, cross-claims against defendants and Site Safety for contribution, common-law indemnification, and contractual indemnification (see Exhibit H in support of Motion Seq. No. 14, SQP's answer ¶¶ 106-107 [NYSCEF Doc. No. 526]). On or about January 11, 2022, Site Safety answered the third-party complaint, and similarly asserted counterclaims against defendants and against SQP for contribution and common-law indemnification (see Exhibit I in support of Motion Seq. No. 14 [NYSCEF Doc. No. 527]; see Exhibit I in support of Motion Seq. No. 13 [NYSCEF Doc. No. 565]).

By decision and order dated November 11, 2024, Site Safety was granted summary judgment dismissing the third-party complaint and all cross-claims against it, "except as to the third-party claim for breach of contract for the failure to procure insurance" (see Exhibit L in support of Motion Seq. 13, at 22 [NYSCEF Doc. No. 568]; Exhibit L in support of Motion Seq. 14, at 22 [NYSCEF Doc. No. 530]). SQP was also granted summary judgment dismissing the third-party complaint and all cross-claims against it, "except as to the third-party claim for breach of contract for the failure to procure insurance and any cross-claims asserted against it" (*id.*).

However, these dismissed causes of action were not severed from the action, presumably because the second causes of action against SQP and Site Safety still remained, along with SQP's own cross-claims against defendants and Site Safety's own counterclaims against defendants and cross-claims against SQP.

By a stipulation of partial discontinuance dated October 21, 2025, defendants' discontinued with prejudice their second cause of action against Site Safety, for breach of contract for failure to procure insurance (see NYSCEF Doc. No. 574). By a stipulation of partial discontinuance dated October 24, 2025, defendants' discontinued with prejudice their second cause of action against SQP, for breach of contract for failure to procure insurance (see NYSCEF Doc. No. 577).

By stipulation dated October 27, 2025, Site Safety discontinued its cross-claims against SQP without prejudice (see NYSCEF Doc. No. 593).

Likewise pursuant Section J, in order for the County Clerk to effectuate this order, the movant must serve a copy of this order on the County Clerk "by filing with NYSCEF a completed Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)" (*id.*)

Thus, in the third-party action, the only remaining claims are SQP’s own cross-claims against defendants/third-party plaintiffs for contribution, common-law indemnification, and contractual indemnification (see SQP’s answer ¶ 107]) and Site Safety’s counterclaims against defendants.

This case is now assigned to this court for trial, and these motions to sever have been referred to this court for determination. They are granted without opposition.

All the causes of action of third-party complaint against the third-party defendants have been effectively resolved.

Although SQP and Site Safety did not discontinue their own cross-claims and counterclaims against defendants/third-party plaintiffs, these cross-claims and counterclaims were asserted only if a judgment were entered SQP and Site Safety, which is no longer possible in light of the dismissal and discontinuance of all of the causes of action of the third-party complaint. Thus, in this court’s view, it would be a waste of judicial resources to direct the third-party defendants to obtain the issuance of a new index number for these remaining cross-claims and counterclaims of the third-party action.² Upon the court’s own initiative, the remaining cross-claims and counterclaims are severed and dismissed without prejudice.

Because the first, third, and fourth causes of action against SQP in the third-party complaint and the first, third, and fourth causes of action against Site Safety in the third-party complaint were previously dismissed by the decision and order dated November 11, 2024, this court will now sever those previously dismissed causes of action and direct entry of judgment thereon.

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<u>11/14/2025</u> DATE		<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
SEQ NO. 013	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
SEQ NO. 014	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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

² The better practice would have been for the Site Safety and SQP to have discontinued their cross-claims and counterclaims against defendants pursuant to a stipulation of partial discontinuance, as they had done with respect to Site Safety’s cross-claims against SQP.