

**Swiergalski v Perl binder Holdings LLC**

2025 NY Slip Op 34567(U)

July 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 514245/2019

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28<sup>th</sup> day of July 2025

HONORABLE FRANCOIS A. RIVERA

-----X

PIOTR P. SWIERGALSKI,

Plaintiff,

-against -

PERLBINDER HOLDINGS LLC, COUSINS COMPANY,  
MARBRU ASSOCIATES, 330 W. 56 STREET  
CORPORATION, 330 WEST 56TH STREET ASSOCIATES,  
CHARLES H. GREENTHAL MANAGEMENT CORP.,  
PRATT CONSTRUCTION & RESTORATION INC., and  
RBS RENOVATION CORP.,

Defendants.

-----X

PERLBINDER HOLDINGS LLC, COUSINS COMPANY,  
MARBRU ASSOCIATES, 330 W. 56 STREET  
CORPORATION, 330 WEST 56TH STREET ASSOCIATES,  
and CHARLES H. GREENTHAL MANAGEMENT CORP.,

Third-Party Plaintiffs,

-against-

RBS RENOVATION CORP.,

Third-Party Defendant.

-----X

PRATT CONSTRUCTION & RESTORATION INC.,

Second Third-Party Plaintiffs,

-against-

RBS RENOVATION CORP.,

Second Third-Party Defendant.

-----X

PRATT CONSTRUCTION & RESTORATION INC.,

Third Third-Party Plaintiffs,

-against-

RITEWAY RENOVATION INC.,

Third Third-Party Defendant.

-----X

RBS RENOVATION CORP.,

Fourth Third-Party Plaintiff,

-against-

RITEWAY RENOVATION INC.,

Fourth Third-Party Defendant.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the branch of the motion for summary judgment filed on July 16, 2024, under motion sequence number seven by defendants Perl binder Holdings LLC, Cousins Company, Marbru Associates, 330 W. 56 Street Corporation, 330 West 56th Street Associates, Charles H. Greenthal Management Corp., Pratt Construction & Restoration Inc., and RBS Renovation Corp. for summary judgment in favor of third third-party plaintiff Pratt Construction & Restoration Inc. and fourth third-party plaintiff RBS Renovation Corp. on their contractual indemnification claims asserted against third third-party defendant/fourth third-party defendant Riteway Renovation Inc. (hereinafter Riteway). This branch of the motion was unopposed

- Notice of motion
- Affirmation in support
  - Exhibits A-V
- Statement of material facts
- Affirmation in opposition to plaintiff's
  - cross-motion and in support of the motion
- Response to plaintiff's statement of material facts
- Reply affirmation in further support of defendants' motion
- Sur-reply in further support of defendants' motion

### *Procedural Background*

By notice of motion, under motion sequence number seven, defendants Perlbinder Holdings LLC, Cousins Company, Marbru Associates, 330 W. 56 Street Corporation, 330 West 56th Street Associates, Charles H. Greenthal Management Corp., Pratt Construction & Restoration Inc., and RBS Renovation Corp. (hereinafter defendants) sought an order, pursuant to CPLR § 3212, granting defendants summary judgment in their favor on the issue of liability under Labor Laws §§ 240(1), 241(6), and 200 and common law negligence and dismissing plaintiff's complaint, as well as for judgment as a matter of law on contractual indemnification claims against third-party defendant / fourth-third party defendant Riteway Renovation, Inc. (hereinafter Riteway).

On June 6, 2025, the Court issued a decision covering nearly all the defendants' motion under sequence number seven. The only branch of the motion that remained outstanding was the part seeking for summary judgment in favor of third third-party plaintiff Pratt Construction & Restoration Inc. and fourth third-party plaintiff RBS Renovation Corp. on their contractual indemnification claims against third third-party defendant / fourth third-party defendant Riteway.

The Court was concerned that by previously granting the motion of Riteway's counsel to be relieved and issuing a stay to obtain new counsel, Riteway may not have received notice of the instant motion. The June 6, 2025, order reserved decision on defendant's contractual indemnification claims until service of the motion was made directly upon Riteway via the New York State Secretary of State and regular mail by July 7, 2025. The matter was adjourned to July 24, 2025, for further proceedings. The movants complied with the direction of service upon Riteway. Riteway did not submit opposition to the motion.

## LAW AND APPLICATION

Third third-party plaintiff Pratt Construction & Restoration Inc. and fourth third-party plaintiff RBS Renovation Corp. (hereinafter the movants) seek summary judgment in their favor on their respective third part claims for contractual indemnification against third third-party defendant/fourth third-party defendant Riteway.

Regarding the third-party action, “[t]he right to contractual indemnification depends upon the specific language of the contract” (*Anderson v United Parcel Service*, 194 AD3d 675 [2d Dept 2021], citing *O'Donnell v. A.R. Fuels, Inc.*, 155 AD3d 644, 645 [2d Dept 2017]). “The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances” (*Anderson v United Parcel Service*, 194 AD3d 675 [2d Dept 2021], citing *George v. Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). “In addition, ‘a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor’” (*Reisman v. Bay Shore Union Free School Dist.*, 74 AD3d 772, 773 [2d Dept 2010]). Upon a party's prima facie showing of entitlement to contractual indemnification, the burden shifts to the party opposing the motion, who must raise a triable issue of fact as to the enforceability of the contractual indemnification clause (*see Mejia v. Cohn*, 188 AD3d 1035, 1038 [2d Dept 2020]).

In support of this branch of the motion the movant have submitted four affirmations by their counsel, Jessica J. Beauvais (hereinafter Beauvis), twenty-two exhibits labeled A though V, and a statement of material facts in accordance with 22 NYCRR 202.8-g. Beauvis's four affirmation were in support of the movant's motion, in opposition to the plaintiff's cross motion, in reply to plaintiff's opposition and in further reply to same. Included in the annexed exhibits were

the deposition transcripts of the Rafael Castillo, Krzysztof Bak, Robert Wierzbinski, Marcin Lizewski and the plaintiff. Also included was an affidavit of Steven Sanchez.

The movant's statement of material facts contained twenty enumerated statements. The purported source of every fact therein was either from an annexed document or from the affirmation of Beauvis. No other sworn testimony was used to support the twenty enumerated facts. The movants did not refer to or rely upon any part of the sworn testimony of either the plaintiff, or Rafael Castillo, Krzysztof Bak, Robert Wierzbinski, Marcin Lizewski and Steven Sanchez.

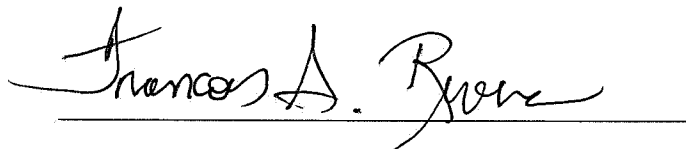
The affirmations of Beauvis, however, demonstrated no personal knowledge of any of the transactions or occurrences alleged in either the plaintiff's complaint or in the movants' third-party actions. Beauvis did aver participation in the execution of any contract between any named parties. The movants entire claim for contractual indemnity is premised on a contract between RBS Renovation Corp. and Riteway that is annexed as exhibit U to the motion. Beauvis is not a signatory on that contract. The contract was not authenticated by anyone with personal knowledge and is not self-admitting. Consequently, the document supporting the movants' claim is not admissible. To, the extent that Rafael Castillo, Krzysztof Bak, Robert Wierzbinski, Marcin Lizewski or Steven Sanchez could have provided testimony authenticating the contract between RBS Renovation Corp. and Riteway, the movant did not proffer it. The movants did not make a prima facie showing of entitlement to summary judgment on their respective claims for contractual indemnity asserted against Riteway. The motion is therefore denied without regard to the sufficiency, or lack thereof, of Riteway's opposition papers (*See Cugini v System Lbr. Co.*, 111 AD2d 114, 115 [1st Dept 1985]).

**CONCLUSION**

The motion by defendants Perlbinder Holdings LLC, Cousins Company, Marbru Associates, 330 W. 56 Street Corporation, 330 West 56th Street Associates, Charles H. Greenthal Management Corp., Pratt Construction & Restoration Inc., and RBS Renovation Corp., for summary judgment in favor of third third-party plaintiff Pratt Construction & Restoration Inc., and fourth third-party plaintiff RBS Renovation Corp., on their contractual indemnification claims against third third-party defendant/fourth third-party defendant Riteway Renovation Inc. is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



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J.S.C.

**HON. FRANCOIS A. RIVERA**