

Munoz v Jamaica Bldrs. LLC
2025 NY Slip Op 35303(U)
July 11, 2025
Supreme Court, Queens County
Docket Number: Index No. 717477/2020
Judge: Chereé A. Buggs
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Ever Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

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BONIFACIO MUNOZ,

Index No.: 717477/2020

Motion Date: 4/28/2025

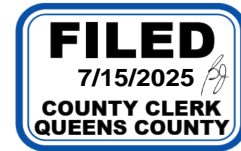
Plaintiff,

Motion Cal. No.: 28

-against-

Motion Sequence No.: 12

JAMAICA BUILDERS LLC, 153 JAMAICA HOUSING DEVELOPMENT FUND CORPORATION, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, NEW DESTINY HOUSING CORPORATION, JAMAICA OWNER LLC, BFC PARTNERS, L.P., JAMAICA RETAIL OWNER LLC, SMJ DEVELOPMENT LLC, 153 JAMAICA DEVELOPER LLC, BFC PARTNERS DEVELOPMENT LLC, SMJ JAMAICA LLC, BFC ASSOCIATES, LLC, RISE DEVELOPMENT PARTNERS, LLC, RISE CONCRETE LLC, and CONCRETE SUPERSTRUCTURES, INC.,



Defendants.

-----X
RISE DEVELOPMENT PARTNERS, LLC and
RISE CONCRETE LLC,

Third Party Plaintiffs,

-against-

ARO CONSTRUCTION GROUP INC.,

Third Party Defendants.

-----X
RISE DEVELOPMENT PARTNERS, LLC, RISE CONCRETE LLC,
153 JAMAICA HOUSING DEVELOPMENT FUND CORPORATION,
JAMAICA OWNER LLC, and JAMAICA RETAIL OWNER LLC,

Second Third-Party Plaintiffs,

-against-

ARO CONSTRUCTION GROUP, INC, STATE NATIONAL
INSURANCE COMPANY NAVIGATORS INSURANCE
COMPANY and ENDURANCE AMERICAN INSURANCE COMPANY,

Second Third-Party Defendants.

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The following efile papers numbered 484-495, 504-505, 507 submitted and considered on this motion by third-party defendant/second third-party defendant ARO Construction Group, Inc. (hereinafter “ARO”), seeking an order pursuant to CPLR 3211 (a)(1), dismissing the second third-party complaint as against ARO, as there is documentary evidence providing ARO with a defense; Pursuant to CPLR 3211(a)(4), dismissing the second third-party complaint by the second third-party plaintiffs Rise Development Partners, LLC and Rise Concrete LLC (hereinafter collectively as “RISE”), as there is another action pending between the same parties; Pursuant to CPLR 3211(a)(5), dismissing the second third-party complaint as against ARO, as there is a prior Court Order resolving the causes of action brought by the parties in the second third-party complaint as against ARO; or, in the alternative, severing the second third-party action pursuant to CPLR 603.

ARO’s motion is **granted** in its entirety.

<u>Motion Sequence 12</u>	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 484-495
Affirmation in Opposition-Affidavits-Exhibits.....	EF 504-505
Reply Affirmation-Affidavits-Exhibits.....	EF 507

Relevant Factual and Procedural Background

This action arises from an accident that allegedly occurred on September 16, 2019, at a construction site located at 153-24 90th Road/153-19 Jamaica Avenue, Jamaica, New York. The Plaintiff, Bonifacio Munoz, who was employed by ARO at the time, claims that he sustained injuries while performing construction work at the site. The main action was commenced by Munoz on October 2, 2020.

On April 7, 2021, RISE Development Partners, LLC and RISE Concrete LLC (collectively “RISE”) commenced a third-party action against ARO. That third-party complaint asserted causes of action for contractual indemnification, failure to procure insurance, common-law indemnification, and contribution. ARO filed an answer to the first third-party complaint on August 4, 2021. On June 7, 2022, the Court issued an order requiring that any further third-party actions be commenced promptly upon discovery of the identity of the third-party defendants, and no later than 30 days after the completion of depositions, unless good cause was shown. The Note of Issue was filed on September 28, 2023.

On February 7, 2024, the Court denied RISE's motion for summary judgment on the issue of contractual indemnification against ARO. The Court held that the subcontractor agreement's indemnification clause, which purported to indemnify RISE against all damages incurred during the performance of the contract, including those arising from RISE's own negligence, violated General Obligations Law § 5-322.1 and was therefore unenforceable.

Subsequently, on March 24, 2025, RISE and three additional entities: 153 Jamaica Housing Development Fund Corporation; Jamaica Owner LLC; and Jamaica Retail Owner LLC, filed a second third-party complaint against ARO. The second third-party complaint asserts the same four causes of action against ARO: contractual indemnification, failure to procure insurance, common-law indemnification, and contribution. In addition, the second third-party complaint includes claims against three insurers: State National Insurance Company, Navigator Insurance Company, and Endurance American Insurance Company.

In support of its motion to dismiss the second third-party complaint, ARO argues that the second third-party complaint asserts causes of action against it that are duplicative of those brought in the first third-party action by RISE. ARO contends that the same contractual claims were already raised and resolved by the February 7, 2024 court order. ARO further contends that the addition of the three Jamaica entities does not revive those claims because the contract at issue, between RISE and ARO, does not identify the Jamaica entities as owners, does not name them anywhere in the agreement, and does not incorporate any other documents by reference. ARO maintains that the contractual language does not obligate it to name any "Owner" other than those already identified, Rise Concrete LLC and Rise Development Partners LLC, as additional insureds.

ARO further argues that the second third-party action was filed in violation of the Court's June 7, 2022 Order, as it was filed far beyond the 30-day post-deposition deadline without any showing of good cause. ARO therefore seeks dismissal under CPLR 3211(a)(1), (a)(4), and (a)(5), or alternatively, severance of the second third-party action under CPLR 603. In support of the motion, ARO submitted the subcontract agreement, prior court orders, and the pleadings from the original and subsequent third-party actions.

In opposition, RISE and the Jamaica entities argue that the second third-party complaint differs materially from the first in that it includes a declaratory judgment claim related to ARO's and the insurers' obligations to indemnify and defend. They assert that the claims are not duplicative because the first third-party action did not include the insurers as parties, nor did it raise the issue of the insurers' obligations under the policy. RISE also contends that the denial of summary judgment on indemnification grounds did not dispose of the issue entirely, as the matter is now on appeal and the denial of summary judgment does not equate to a final determination on the merits. RISE further argues that the contract does require ARO to name "Owner" as an additional insured and that the indemnity clause and insurance requirements are enforceable. They cite language in the subcontract that they claim supports their position that the Jamaica entities were intended beneficiaries.

With respect to the timeliness of the second third-party action, RISE argues that any delay

is justified given the evolving procedural posture of the case, the ongoing appeal, and the need to protect their rights. They maintain that dismissal is inappropriate and that the Court should deny ARO's motion in its entirety.

In reply, ARO reiterates that the RISE entities have simply duplicated their previous claims and that the second third-party action improperly attempts to re-litigate issues already resolved by the Court. ARO argues that the appeal does not stay or negate the effect of the Court's February 7, 2024 ruling, and that the second third-party plaintiffs cannot treat the existing order as nonexistent. ARO also reasserts that the subcontract does not name or obligate it to indemnify or insure the Jamaica entities and notes that the opposition fails to identify who the "Owner" in the contract actually is. Finally, ARO argues that the June 7, 2022 Order is binding and that no good cause has been shown for the late filing of the second third-party action. Accordingly, ARO maintains that the second third-party complaint should be dismissed, or in the alternative, severed.

Law and Application

CPLR 3211 (a) motion to dismiss provides:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence; or
2. the court has not jurisdiction of the subject matter of the cause of action; or
3. the party asserting the cause of action has not legal capacity to sue; or
4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires; or
5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds; or
6. with respect to a counterclaim, it may not properly be interposed in the action; or
7. the pleading fails to state a cause of action; or
8. the court has not jurisdiction of the person of the defendant; or
9. the court has not jurisdiction in an action where service was made under section 314 or 315; or
10. the court should not proceed in the absence of a person who should be a party.
11. the party is immune from liability pursuant to section seven

hundred twenty-a of the not-for-profit corporation law...

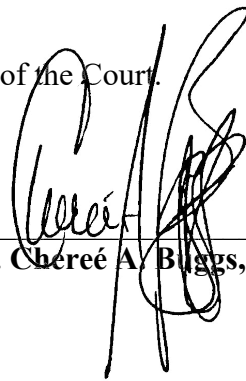
“A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint on the ground that a defense is founded on documentary evidence may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*see B & B Maintenance Services, Inc. v Town of Oyster Bay*, 228 AD3d 808, 808 [2d Dept 2024]; citing *Qureshi v Vital Transportation, Inc.*, 173 AD3d 1076, 1077 [2d Dept 2019]; *Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]). “The evidence submitted in support of such motion must be documentary or the motion must be denied” (*see Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]; citing *Prott v Lewin & Baglio, LLP*, 150 AD3d 908 [2d Dept 2017]; *see also Attias v Costiera*, 120 AD3d 1281, 1283 [2d Dept 2014]; *Fontanetta v Doe*, 73 AD3d 78, 84 [2d Dept 2010]).

In the case at hand, this Court finds that documentary evidence, namely the February 7, 2024, court order utterly refutes RISE’s factual allegations, conclusively establishing a defense as a matter of law. The same contractual indemnification claims in this second-third party action were already resolved in this Court’s February 7, 2024 order. To allow RISE’s second-third party action at hand to proceed would risk inconsistent decisions between this Court’s February 7, 2024 order and the potential summary judgment action. Next, this Court finds that the June 7, 2022 Order set the deadline for filing third-party actions to thirty days from the date of that order, and no good cause has been shown for RISE’s late filing of its March 4, 2025 Second-Third Party Complaint. Furthermore, the insurers were long known to RISE and there is no justification for their late inclusion now. RISE’s argument that ARO cannot request for a full dismissal since the insurers, State National Insurance Company, Navigator Insurance Company, and Endurance American Insurance Company, have not answered, and that ARO does not represent them is without merit, as the claims against State National Insurance Company, Navigator Insurance Company, and Endurance American Insurance Company are derivative to RISE’s claim against ARO (*see Interstate Adjusters, Inc. v First Fid. Bank, N.A.*, 251 AD2d 232, 234 [1st Dept 1998]). Accordingly, it is hereby

ORDERED, that ARO’s motion seeking to dismiss RISE’s second-third party complaint is **granted** in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: July 11, 2025


Hon. Chereé A. Bliggs, JSC

