

Rebollar v Hope E. of Fifth Hous. Dev. Fund Co., Inc.

2026 NY Slip Op 30016(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 151176/2021

Judge: Paul A. Goetz

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

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ANABEL REBOLLAR,

Plaintiff,

- v -

HOPE EAST OF FIFTH HOUSING DEVELOPMENT FUND
COMPANY, INC., HOPE EAST OF FIFTH LLC, HOPE
COMMUNITY, INC., NOTIAS CONSTRUCTION INC., JIND
CONSTRUCTION INC., JIND CONTRACTORS INC., KISKA
SOLUTIONS, INC.,

Defendants.

-----X

HOPE EAST OF FIFTH HOUSING DEVELOPMENT FUND
COMPANY, INC., HOPE EAST OF FIFTH LLC, HOPE
COMMUNITY, INC.

Plaintiffs,

-against-

NOTIAS CONSTRUCTION INC., JIND CONSTRUCTION INC.

Defendants.

-----X

HOPE EAST OF FIFTH HOUSING DEVELOPMENT FUND
COMPANY, INC., HOPE EAST OF FIFTH LLC, HOPE
COMMUNITY, INC.

Plaintiffs,

-against-

KISKA SOLUTIONS, INC., JIND CONTRACTORS INC.,

Defendants.

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INDEX NO. 151176/2021
MOTION DATE 03/21/2025,
03/22/2025,
03/24/2025
MOTION SEQ. NO. 004 005 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596039/2021

Second Third-Party
Index No. 595142/2023

The following e-filed documents, listed by NYSCEF document number (Motion 004) 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 357, 363, 366, 369, 376, 377, 378, 379, 380, 381,

382, 383, 384, 385, 386, 409, 410, 413, 414, 415, 416, 417, 418, 419, 420, 423, 424, 442, 446, 447, 448, 449

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 355, 358, 364, 367, 370, 387, 388, 389, 390, 391, 400, 401, 402, 403, 404, 405, 406, 407, 408, 411, 412, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 443, 444, 445, 450

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 006) 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 356, 359, 365, 368, 371, 372, 373, 374, 375, 392, 393, 394, 395, 396, 397, 398, 399, 421, 422, 438, 439, 440, 441

were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action, on October 3, 2020, plaintiff was walking through the gate to the courtyard of the residential building where she lives, located at 334 E 112th Street, New York, NY 10029 (the building), which is owned by defendants Hope East of Fifth Housing Development Fund Company Inc., Hope East of Fifth LLC, and Hope Community Inc. (collectively, Hope East), when she was struck in the head by a metal object (NYSCEF Doc No 217 ¶¶ 4-5). The metal object was the gate’s locking mechanism; it had been affixed to the top of the door frame but fell on plaintiff as she passed through the gate (*id.* ¶¶ 8-9 [the lock was “held on by bolts and screws” which may “become loose through regular use of the door”]).

Several years before plaintiff’s accident, on December 28, 2016, Hope East retained defendant Notias Construction Inc. (Notias) as a general contractor to modernize and renovate the premises (NYSCEF Doc No 41). Notias retained defendant Jind Construction Inc. / Jind Contractors Inc. (Jind) and Kiska Solutions Inc. (Kiska) as subcontractors (NYSCEF Doc Nos 350, 351). Jind installed the gate, and Kiska installed the gate’s key fob and locking mechanism in April of 2018 (NYSCEF Doc No 260, pp. 57-58).

Plaintiff moves pursuant to CPLR § 3212 (MS #4) for partial summary judgment on the issue of liability as against Hope East and to strike Hope East's affirmative defenses for: plaintiff's own culpable conduct (second), plaintiff's assumption of the risk (third), intervening causes (fifth), negligence of third parties (sixth), Hope East's lack of control over the persons or instrumentalities causing plaintiff's injury (seventh), injury caused "through the operation of nature" (eighth), and that the action is barred by the statute of limitations (thirteenth). Hope East cross-moves pursuant to CPLR § 3212 for summary judgment "dismissing Plaintiff's Complaint regarding Plaintiff's claims of negligence and under the doctrine of *res ipsa loquitor*" and for summary judgment on their claims for contractual indemnification, common law indemnification, contribution and breach of contract as against the remaining parties.

Notias moves pursuant to CPLR § 3212 (MS #5) for summary judgment dismissing plaintiff's complaint and all crossclaims arising therefrom; for summary judgment dismissing the third-party complaint and crossclaims for common law indemnity, contribution, contractual indemnity, and failure to procure insurance, as asserted against it; and for summary judgment on its crossclaims against Kiska and Jind for defense and contractual indemnity, along with common law indemnity, contribution, and breach of contract for failure to procure insurance.

Kiska moves pursuant to CPLR § 3212 (MS #6) for summary judgment dismissing all claims, third-party claims, crossclaims, and counterclaims as asserted against it.

Based on the foregoing, and the documents submitted on the motions, it is

ORDERED that plaintiff's motion (MS #4) is:

- (i) Denied to the extent that plaintiff moves pursuant to CPLR § 3212 for partial summary judgment on the issue of liability as against Hope East because:
 - a. "[P]laintiff failed to make a prima facie showing" that Hope East was negligent since there is "conflicting evidence with respect to" Hope East's notice of the condition (*Hernandez v Conway Stores, Inc.*, 143 AD3d 943, 944-45 [2nd Dept

2016]; NYSCEF Doc No 254, pp. 40-43 [plaintiff testifying that her husband told her he complained about the gate]; NYSCEF Doc No 344, p. 75 [Hope East director of maintenance Craig Harty testifying that he never received a complaint in connection with the gate]; and

- b. The doctrine of *res ipsa loquitur*¹ does not apply, as the gate “was not in the exclusive control of [Hope East] since [it was] indisputably used” regularly by residents of the building (*Doherty v 730 Fifth Upper, LLC*, 227 AD3d 606, 608 [1st Dept 2024] [plaintiff “was injured when the glass door that he used to enter the lobby of the [] Building [] shattered . . . as he pulled the interior vestibule door’s metal door handle”]; NYSCEF Doc No 217 ¶ 14 [“The gate involved in plaintiff’s incident was the only way to get into the building”]; NYSCEF Doc No 344, p. 119 [Harty affirming that the buildings “tenants would have access to” the gate]), and therefore “[t]his is not one of ‘the rarest of *res ipsa loquitur* cases’ in which the plaintiff is entitled to summary judgment based on the doctrine” (*Aponte v Bronx Preserv. Hous. Dev. Fund Corp.*, 202 AD3d 401, 402 [1st Dept 2022], quoting *Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006] [explaining this “would happen only when the plaintiff’s circumstantial proof is so convincing and the defendant’s response so weak that the inference of defendant’s negligence is inescapable”]);
- (ii) Denied to the extent that plaintiff moves to strike Hope East’s second, third, fifth, sixth, seventh, eighth and thirteenth affirmative defenses because plaintiff’s argument in support of such relief “is improperly raised for the first time in [her] reply brief” (*Stang LLC v Hudson Sq. Hotel, LLC*, 158 AD3d 446, 447 [1st Dept 2018]; NYSCEF Doc No 442) instead of her initial moving papers (NYSCEF Doc No 219);

And it is further

ORDERED that Hope East’s cross-motion pursuant to CPLR § 3212 for summary judgment (MS #4) is:

- (i) Denied to the extent that it seeks to “dismiss[] Plaintiff’s Complaint regarding Plaintiff’s claims of negligence” (NYSCEF Doc No 325) because Hope East failed to “submit evidence concerning when the area was last [] inspected prior to the accident” as required to establish that it lacked constructive notice of the dangerous condition (*Sabalza v Salgado*, 85 AD3d 436, 437-38 [1st Dept 2011]); and granted to the extent that plaintiff is not entitled to an inference of negligence based on the

¹ “*Res ipsa loquitur* permits a factfinder to infer negligence based upon the sheer occurrence of an event where a plaintiff proffers sufficient evidence that (1) the occurrence is not one which ordinarily occurs in the absence of negligence; (2) it is caused by an instrumentality or agency within the defendant’s exclusive control; and (3) it was not due to any voluntary action or contribution on the plaintiff’s part” (*Ezzard v One E. Riv. Place Realty Co., LLC*, 129 AD3d 159, 162 [1st Dept 2015]). When the doctrine applies, “the plaintiff need not offer evidence of actual or constructive notice in order to proceed” because “notice is inferred” (*id.* at 163).

- doctrine of *res ipsa loquitur* because, as noted *supra*, Hope East did not have exclusive control over the gate;
- (ii) Denied to the extent that it seeks summary judgment on its claims against Notias, Jind, and Kiska because:
- a. Hope East failed to establish, with respect to its contractual indemnification claim, “that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021], quoting *Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]);
 - b. Hope East failed to prove, with respect to its common law indemnification claim, not only its own lack of negligence but “that the proposed indemnitor[s] [were] guilty of some negligence that contributed to the causation of the accident” (*Winkler v Halmar Intl., LLC*, 206 AD3d 458, 461 [1st Dept 2022], citing *Priestly v Montefiore Medical Center/Einstein Medical Center*, 10 AD3d 493, 508 [1st Dept 2004]; accord *Naughton v City of New York*, 94 AD3d 1, 10 [1st Dept 2012]);
 - c. Hope East’s claims for “contribution [are] premature, as there are triable issues as to whether [the other defendants were] actively negligent in proximately causing plaintiff’s injury” (*Simon v 4 World Trade Ctr. LLC*, 2025 NY Slip Op 05655 *1 [1st Dept, Oct. 14, 2025]), especially considering the gate and lock were installed more than two years before plaintiff’s accident;
 - d. With respect to Hope East’s breach of contract claim for failure to procure insurance, Notias submitted its certificate of insurance (NYSCEF Doc No 289), which is “sufficient by itself to raise an issue of fact as to whether it procured insurance” (*Long v Tishman/Harris*, 50 AD3d 356, 357 [1st Dept 2008]), and Hope East did not address this evidence in reply (NYSCEF Doc No 447);

And it is further

ORDERED that Notias’s motion pursuant to CPLR § 3212 for summary judgment (MS #5) is:

- (i) Granted to the extent that it seeks dismissal of plaintiff’s complaint as against it because plaintiff’s claims against Notias are predicated on its alleged “negligent hiring of Kiska and failure to inspect Kiska’s work” (NYSCEF Doc No 389), but Notias has demonstrated “it retained only general supervisory powers over the subcontractors” and therefore is not “responsible to third parties” such as plaintiff for the allegedly “negligent acts of [its] subcontractors” (*Foran v Marsh & McLennan, Inc.*, 29 AD2d 857, 857 [1st Dept 1968]; *Damiani v Federated Dept. Stores, Inc.*, 23 AD3d 329, 331 [2nd Dept 2005] [finding general contractor was not negligent where

there was no “evidence that [it] supervised, directed, or controlled the manner of [it’s subcontractor’s] work in wiring the lights” that led to plaintiff’s injury]; NYSCEF Doc No 278, pp. 121-24 [Notias project manager Carlos Quintero testifying that “quality control is strictly done by the subcontractor”]; NYSCEF Doc Nos 284, 285 [Article 9 of subcontracts providing that “[t]he subcontractor shall supervise and direct its own Work”) and plaintiff “failed to raise a triable issue as to whether [Notias] was in any way involved in the allegedly defective installation of the” gate and locking mechanism beyond its general supervision (*Johnson v City of New York*, 102 AD3d 746, 749 [2nd Dept 2013]; *Oregon Leopold Day Care Ctr. Ass’n v Di Marco Constructors Corp.*, 104 AD2d 719, 719 [4th Dept 1984] [“plaintiff’s affidavits were conclusory and failed to raise a triable issue as to whether [the general contractor] directed the manner, means or method of [its subcontractor’s] activities” which led to plaintiff’s accident])²;

- (ii) Granted to the extent that it seeks dismissal of the third-party complaint and crossclaims as against it for common law indemnity, contractual indemnity, and contribution, based on the foregoing (*Navedo v. VNO 225 W. 58th Street LLC*, 203 AD3d 406, 407 [1st Dept 2022] [“Third-party defendant . . . established prima facie that it was not negligent in connection with plaintiff’s accident and therefore is not liable to defendants for [] indemnification and contribution”]); and breach of contract for failure to procure insurance because Notias submitted its certificate of insurance naming Hope East as an additional insured as required by their contract (NYSCEF Doc No 289) and Hope East did not oppose this part of the motion (NYSCEF Doc No 400) and therefore the claim is deemed abandoned (*Norris v Innovative Health Sys., Inc.*, 184 AD3d 471, 473 [1st Dept 2020] [plaintiff’s claim was “dismissed as abandoned” because she “did not oppose that part of [the defendant’s] motion seeking dismissal of [that] claim[.]”]);
- (iii) Granted to the extent it seeks summary judgment on its crossclaims against Kiska and Jind for contractual indemnity because if Kiska or Jind are found liable, their liability will be “arising out of or resulting from performance or lack of performance of the Subcontractor’s Work” and Notias’s contracts provide that “the Subcontractor shall [] indemnify [] the Contractor . . . from and against any and all [such] claims” (NYSCEF Doc Nos 284, 285 §9.6.1) and Notias has demonstrated “that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Pena*, 194 AD3d at 578, quoting *Correia*, 259 AD2d at 65);
- (iv) Denied to the extent it seeks summary judgment on its crossclaims against Kiska and Jind for common law indemnity and contribution because Notias has not established as a matter of law “that the proposed indemnitor[s] [were] guilty of some negligence that contributed to the causation of the accident” (*Winkler*, 206 AD3d at 461); and for breach of contract for failure to procure insurance, as Kiska and Jind submitted certificates of insurance naming Notias as an additional insured as required by their

² In the cases cited by plaintiff where contractors were deemed negligent, the contractors were directly involved in installing, building, or otherwise creating the condition that caused the injury (*see generally*, NYSCEF Doc No 389).

