Board of Mgrs. of 252 Condominium v World-Wide Holdings Corp.
2026 NY Slip Op 30021(U)
January 5, 2026
Supreme Court, New York County
Docket Number: Index No. 652387/2022
Judge: Anar R. Patel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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THE BOARD OF MANAGERS OF 252 CONDOMINIUM, ON BEHALF OF THE UNIT OWNERS,

Plaintiff,

- v -

WORLD-WIDE HOLDINGS CORP., SNOWPLOW LH 2 LLC, JAMES STANTON, DAVID LOWENFELD, ADAM R. ROSE, SNOWPLOW LH LLC, ROSE ASSOCIATES, INC., BENSON INDUSTRIES, INC., TECNOGLASS INC.,

Defendants.

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INDEX NO. 652387/2022

MOTION DATE 08/11/2025

MOTION SEQ. NO. 021

DECISION + ORDER ON MOTION

SNOWPLOW LH 2 LLC, SNOWPLOW LH LLC

Plaintiffs,

-against-

LENDLEASE (US) CONSTRUCTION LMB INC., SLCE ARCHITECTS, LLP, SKIDMORE, OWINGS & MERRILL LLP, DESIMONE CONSULTING ENGINEERS PLLC, WSP USA BUILDINGS INC. F/K/A WSP FLACK & KURTZ, INC. STRUCTURAL ENGINEERS, GMS, LLP F/K/A GILSANZ MURRAY STEFICEK LLP

Defendants.

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Third-Party
Index No. 595920/2022

LENDLEASE (US) CONSTRUCTION LMB INC.

Plaintiff,

-against-

ASM MECHANICAL SYSTEMS, BENSON

Second Third-Party
Index No. 595359/2024

INDUSTRIES, LLC, EPIC MECHANICAL CONTRACTORS, LLC, FD SPRINKLERS, INC., ISLAND ACOUSTICS, LLC, JANTILE INC., L&L PAINTING CO., INC., L.I.F. INDUSTRIES, INC., LYNBROOK GLASS & ARCHITECTURAL METALS CORP., MARTIN ASSOCIATES, INC., MENT BROS IRON WORKS CO., INC., NAVILLUS TILE, INC., PARKVIEW PLUMBING AND HEATING CORP., SJ ELECTRIC, INC., WOLKOW BRAKER ROOFING CORP., WOODWORKS CONSTRUCTION COMPANY INC., JOHN DOES

Defendants.

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 1105–22, 1152, 1154, 1155, 1176 were read on this motion to/for DISMISS.

Relevant Factual[1] and Procedural History

The Court incorporates, by reference, the factual and procedural summaries from the Decisions and Orders on Motion Sequence Numbers 003, 004, 006, 011, 012, 015, and 019. NYSCEF Doc. Nos. 533–35, 1054–55, 1065, 1078.

Defendant/Second Third-Party Defendant Benson Industries, LLC ("Benson") is a Delaware corporation with its principal place of business in New York. Third Amended Complaint, NYSCEF Doc. No. 981 ¶ 27 ("TAC"). Benson entered into a Trade Contract with Third-Party Defendant/Second Third-Party Plaintiff Lendlease (US) Construction LMB Inc ("Lendlease"). *Id.* Lendlease was the construction manager for a condominium building located at 252 East 57th Street, New York, New York 10022 ("the Building"). TAC ¶¶ 1, 27. Pursuant to the contract, Benson was to perform services in connection with the Building's construction, including construction of the Building's curtain wall. *Id.* ¶¶ 27, 238.

Defendant Tecnoglass Inc. ("Tecnoglass") is a Cayman Islands corporation with its principal place of business in New York. TAC ¶ 28. Benson entered into a contract with Tecnoglass, pursuant to which Tecnoglass would manufacture and deliver flat glass panels to be installed at the Building. *Id.*; Tecnoglass Inc. Answer to Third Amended Complaint, NYSCEF Doc. No. 1095 ¶¶ 3, 10.

[1] The facts are taken from the Third Amended Complaint ("TAC") filed in this action, as well as Defendants Benson Industries, LLC's and Tecnoglass Inc.'s respective Answers to the TAC, and are accepted as true for the purpose of this Motion to Dismiss.

The plaintiff in this action, the condominium board of the Building ("Plaintiff"), alleges that it discovered that the curtain wall Benson constructed was prone to chronic problems including: (1) "chronic fogging of the curtain wall's insulated glass units ("IGU")" caused, *inter alia*, by failures of the hermetic seal; (2) "the intrusion of desiccants and sealants into IGU interiors;" (3) "inconsistent IGU coloration;" (4) "severe chipping along IGU edges;" (5) "misapplied sealant on the curtain wall's exterior;" (6) delamination of glass units installed in the building's balconies; (7) dented frames; (8) loose gaskets; (9) "widespread scratching, pitting, and spotting;" (10) "substantial air leaks;" and (11) on one occasion, a window shattered spontaneously. TAC ¶¶ 106–07. These defects require remedies including replacement or, in less severe cases, continuous cleaning. *Id.*

Upon learning of these defects, Benson completed "certain repairs for defective windows or agreed to repair others," but "many remain unrepaired to this date." TAC ¶ 245. On June 5, 2023, January 22, 2024, March 6, 2024, and February 25, 2025, Plaintiff provided Benson with notice of warranty claims. TAC ¶¶ 246–49. Then, in March 2025, Plaintiff "provided Benson and others with further lists and diagrams of defects," which Plaintiff asserts still "have not been remedied." *Id.* ¶ 251.

Plaintiff brings claims against Tecnoglass and Benson for breach of their respective warranties relating to the manufacture and installation, respectively, of the glass panels, which claims this Court has already examined. *See* NYSCEF Doc. Nos. 1054, 1065. Benson is also the subject of third-party claims brought by Lendlease, pursuant to a chain of asserted liability for Plaintiff's damages arising from alleged defects in the construction of the Building. Under this chain of liability, Plaintiff brings claims for (*inter alia*) breaches of contract and indemnity against Defendants Snowplow LH LLC and Snowplow LH 2 LLC (the sponsors of the Building's offering plan), which in turn bring third-party claims for breach of contract and indemnification against (*inter alia*) Lendlease, which itself brings second third-party claims for breach of contract, indemnification, and negligence against (*inter alia*) Benson.

In response to both the claims brought by Plaintiff and the second third-party claims brought by Lendlease, Benson filed cross-claims for contribution and/or indemnification, contractual indemnification, and breach of an insurance procurement obligation against all other Defendants, Third-Party Defendants, and Second Third-Party Defendants. NYSCEF Doc. No. 1068 (Cross-Claims). Tecnoglass now moves to dismiss Benson's cross-claims in their entirety pursuant to CPLR §§ 3211(a)(1) and (7) (Mot. 021). Benson opposes the motion.

Legal Analysis

"When reviewing a [party's] motion to dismiss a complaint for failure to state a cause of action [pursuant to CPLR § 3211(a)(7)], a court must give the complaint a liberal construction, accept the allegations as true and provide [the non-movant] with the benefit of every favorable inference." *Doe v. Bloomberg, L.P.*, 36 N.Y.3d 450, 454 (2021) (citation omitted). "The ultimate question is whether, accepting the allegations and affording these inferences, '[the non-movant] can succeed upon any reasonable view of the facts stated.'" *Id.* (citation omitted). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled" to favorable inferences. *Maas v. Cornell Univ.*, 94 N.Y.2d

87, 91 (1999) (citation omitted). "Dismissal of the complaint is warranted if the [non-movant] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

"Pursuant to CPLR § 3211(a)(1), where the 'documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law,' dismissal is warranted." *Excel Graphics Techs., Inc. v. CFG/AGSCB 75 Ninth Ave.*, L.L.C., 1 A.D.3d 65, 69 (1st Dept. 2003) (quoting *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994)). "A party seeking dismissal on the ground that its defense is founded upon documentary evidence pursuant to CPLR § 3211(a)(1) has the burden of submitting documentary evidence that 'resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim.'" *Mazur Bros. Realty, LLC v. State*, 59 A.D.3d 401, 402 (2d Dept. 2009) (quoting *Sullivan v. State*, 34 A.D.3d 443, 445 (2d Dept. 2006)). "If documentary proof submitted in support of the motion disproves a material allegation of the complaint, a determination in the defendant's favor is warranted." *Snyder v. Voris, Martini & Moore, LLC*, 52 A.D.3d 811, 812 (2d Dept. 2008).

Tecnoglass raises a single argument against Benson's cross-claims: that they are barred by the terms of the contract between the two parties (the "Terms of Sale"). In sum, Tecnoglass asserts that it supplied the flat glass panels to Benson via numerous purchase orders, each of which contain the following language:

> This Purchase Order is subject to the terms and conditions set forth in the Terms of Sale, which document is available on Tecnoglass' website, and which document is hereby incorporated into this Purchase Order and made a part hereof. In the event of any conflict between the terms and conditions set forth in the Terms of Sale and any other document entered into between Tecnoglass and the above Purchaser [Benson], the Terms of Sale shall govern and control.

NYSCEF Doc. Nos. 1108–20 (the "Purchase Orders").[2] In turn, the Terms of Sale referenced by the Purchase Orders contains the following language:

> 9. TECNOGLASS has no system design or application responsibility to [Benson] or any third party.
>
> 10. TECNOGLASS EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY OTHER OBLIGATION OR LIABILITY NOT EXPRESSLY SET FORTH IN ITS STANDARD TERMS OF WARRANTY. TECNOGLASS SHALL NOT BE LIABLE

[2] This language does not appear in the Purchase Order filed at NYSCEF Doc. No. 1109. However, this document otherwise follows the same format as the other Purchase Orders filed by Tecnoglass, which do feature this language, and Benson does not contest the existence of this language in each of the relevant Purchase Orders.

> UNDER ANY CIRCUMSTANCES FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.
>
> . . .
>
> 20. Under no circumstances shall TECNOGLASS be liable to or agree to indemnify [Benson] or any third party for any loss, costs, damage or expense (including attorney's fees) resulting from [Benson's] or any third party's actions or conduct. Buyer shall indemnify and hold TECNOGLASS and its employees, agents, assigns and heirs harmless from and against any loss, costs, damage, or expense (including attorney's fees) resulting from any charge or claim of personal injury or property damage arising out of [Benson's] performance under this order or [Benson's] negligence or willful misconduct.

NYSCEF Doc. No. 1121 at 2–3. Tecnoglass argues that these terms "clearly state that under no circumstances would Tecnoglass be liable or agree to indemnify Benson or any third party for any loss, costs, damage or expense resulting from [Benson's] or any third party's actions or conduct." NYSCEF Doc. No. 1122 at 10 (Tecnoglass Mem. of Law). Thus, Tecnoglass contends that the Terms of Sale preclude Benson from making claims for contribution or indemnification against Tecnoglass. Tecnoglass further asserts that the Purchase Orders "do not contain a requirement for Tecnoglass to provide specific insurance for the Project, or to name Benson as an additional insured." *Id.*

As Benson points out, however, its claims for contribution and indemnification are brought on the basis of *Tecnoglass's* "negligence, breach of contract or other breach of duty," not its own. Cross-Claims at 19; *see also* NYSCEF Doc. No. 1176 at pp. 5 (Benson Mem. of Law) ("Benson is arguably being sued in part due to an alleged failure of Tecnoglass's materials that Tecnoglass admits it manufactured and sold to Benson that were then incorporated into the curtainwall installed by Benson."), 8 ("Benson seeks indemnification from Tecnoglass to the extent that Plaintiff's damages, if proven, were sustained as a result of the actions of Tecnoglass."). Consequently, the Terms of Sale—which do not address, much less bar, claims for indemnification arising out of *Tecnoglass's* performance, negligence, or misconduct—cannot reasonably be interpreted to preclude Benson's claim for contribution and/or indemnification.

To be sure, the Terms of Sale do not incorporate an indemnification clause. However, "[a] party's right to indemnification may arise from a contract or may be implied 'based upon the law's notion of what is fair and proper as between the parties.'" *McCarthy v. Turner Const., Inc.*, 17 N.Y.3d 369, 374–75 (2011) (citation omitted). Implied indemnity "is a restitution concept which permits shifting the loss because to fail to do so would result in the unjust enrichment of one party at the expense of the other." *Id.* at 375. New York law "imposes indemnification obligations upon those actively at fault in bringing about the injury, and thus reflects an inherent fairness as to which party should be held liable for indemnity." *Id.* "Implied indemnity is frequently employed in favor of one who is vicariously liable for the tort of another[.]" *Rosado v. Proctor & Schwartz, Inc.*, 66 N.Y.2d 21, 24 (1985). Benson alleges that its liability for the alleged injuries to Plaintiff arises, at least in part, from Tecnoglass's negligence or other breach of duty—*i.e.*, that it is

"vicariously liable" for Tecnoglass's conduct—which, at this stage, supports a claim for implied indemnification. *Id.*

While parties to a contract may disclaim liability, "disclaimers of liability are to be strictly construed." *Alger v. Abele Tractor & Equip. Co.*, 92 A.D.2d 677, 678 (3d Dept. 1983). "To disclaim liability for negligence, the intent of the parties must be expressed in 'unmistakable language.'" *Id.*; *see also Werking v. Amity Ests., Inc.*, 2 N.Y.2d 43, 52 (1956) ("A waiver is 'the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it.'" (citation omitted)). No such language is present in the Terms of Sale.[3] Indeed, "when the corporate parties herein, represented by counsel, wished to [address] indemnification, they specifically employed language of indemnification in another provision of the agreement," *i.e.*, the disclaimer of Tecnoglass's liability for losses arising from Benson's or any third party's conduct. *Alger*, 92 A.D.2d at 678. Thus, at this stage, "the possibility exists that an ultimate finding of liability against [Benson] could have been solely due to [Tecnoglass's] negligence. To the extent that [Tecnoglass] move[s] to dismiss the common-law indemnification claims against it . . . [it] fail[s] to tender evidence sufficient to negate that possibility as a matter of law." *Children's Corner Learning Ctr. v. A. Miranda Contracting Corp.*, 64 A.D.3d 318, 326 (1st Dept. 2009). Tecnoglass therefore fails to establish that the Terms of Sale bar Benson's claim for implied indemnification.

The same conclusion applies to Benson's claim for contribution. In contrast to indemnification, which "involves a shifting of the entire loss, from one who has been compelled to pay for that loss to another," contribution "involves the apportionment, according to fault, of liability among several tort-feasors who share culpability for an injury." *Ott v. Barash*, 109 A.D.2d 254, 260 (2d Dept. 1985). Thus, "two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them . . . ." CPLR § 1401; *Children's Corner Learning Ctr.*, 64 A.D.3d at 323. As with Benson's claim for implied indemnification, Tecnoglass points to no language in the Terms of Sale disclaiming liability for contribution. Consequently, the motion is denied as to Benson's first cross-claim, for contribution and/or indemnification.

However, the motion is granted as to Benson's cross-claims for contractual indemnification and breach of an insurance procurement obligation. These cross-claims rest on allegations concerning the terms of the agreement between the parties, namely, that Tecnoglass (a) "agreed to indemnify and hold [Benson] harmless in the event of any suit or claim for personal injuries, property damage, pecuniary loss and or wrongful death as a result of the work being done pursuant to said agreement[]," and (b) "entered into agreements whereby [Tecnoglass was] to procure insurance and/or name [Benson] as an additional insured under [Tecnoglass's] insurance policies," but "failed to obtain" such insurance coverage. Cross-Claims at 20–21. Benson does not contest that the Purchase Orders and the Terms of Sale "govern and control" its contractual relationship with Tecnoglass. *See generally* Purchase Orders; Benson Mem. of Law at pp. 8 (referring to the

[3] Although the Terms of Sale includes disclaimers as to "design or application responsibility" and "any implied warranty of merchantability or fitness for any particular purpose," *supra*, "[t]his language is only a disclaimer of warranties. It contains no reference to negligence." *Alger*, 92 A.D.2d at 678.

"underlying Purchase Orders"), 13 (referring to "the purchase orders and Terms cited by Tecnoglass"). Yet neither of these documents feature terms imposing a duty on Tecnoglass either to indemnify Benson or to procure insurance on Benson's behalf.

Accordingly, these two cross-claims, which are predicated on the existence of such contractual terms, must be dismissed. *See A & E Stores, Inc. v. U.S. Team, Inc.*, 63 A.D.3d 486, 486 (1st Dept. 2009) (dismissing "claims for contractual indemnification and breach of contract for failure to procure insurance" where movant submitted unrebutted evidence that the agreement between the parties "did not include an agreement to indemnify [non-movant] or procure insurance on its behalf"); *cf. Pantaleo v. Bellerose Senior Hous. Dev. Fund Co.*, 147 A.D.3d 777, 778 (2d Dept. 2017) (affirming dismissal of cross-claims for contractual indemnification and breach of contract to procure insurance, where the movant "established that there was no contract" between the parties, "much less one containing an indemnification provision").

Accordingly, it is hereby

ORDERED that Defendant Tecnoglass Inc.'s ("Tecnoglass") motion to dismiss is DENIED as to Defendant/Second Third-Party Defendant Benson Industries, LLC's ("Benson") first cross-claim for contribution and/or indemnification; and it is further

ORDERED that Tecnoglass's motion to dismiss is GRANTED as to Benson's second and third cross-claims for contractual indemnification and breach of an insurance procurement obligation, to the extent that these cross-claims are brought against Tecnoglass.

The foregoing constitutes the Decision and Order of this Court.

A. R. Patel

January 5, 2026
DATE

ANAR R. PATEL, A.J.S.C.

CHECK ONE:		**CASE DISPOSED**			[X]	**NON-FINAL DISPOSITION**	
	[ ]	**GRANTED**	[X]	**DENIED**	[X]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**			[ ]	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**			[ ]	**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**