Martinez v New York Univ.
2026 NY Slip Op 30206(U)
January 14, 2026
Supreme Court, New York County
Docket Number: Index No. 155677/2020
Judge: Hasa A. Kingo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

----------X

PAULINA MARTINEZ

Plaintiff,

- v -

NEW YORK UNIVERSITY

Defendant.

----------X

INDEX NO. 155677/2020

MOTION DATE 05/30/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

NEW YORK UNIVERSITY

Plaintiff,

-against-

COLLINS BUILDING SERVICES, INC.

Defendant.

----------X

Third-Party
Index No. 595604/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

were read on this motion for SUMMARY JUDGMENT.

Defendant New York University ("NYU") moves for summary judgment pursuant to CPLR § 3212 seeking dismissal of all causes of action in the complaint, and summary judgment in its favor on its third-party claims for contractual defense and indemnification against third-party defendant Collins Building Services, Inc. ("CBS"). Plaintiff Paulina Martinez ("Plaintiff") opposes the motion insofar as it seeks dismissal of her negligence claims. CBS, Plaintiff's employer, submits that the complaint should be dismissed but opposes the branch of NYU's motion seeking contractual indemnification.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from a personal injury accident on August 4, 2017, in the 12th-floor women's bathroom of NYU's Warren Weaver Hall in Manhattan. Plaintiff, a janitorial worker employed by CBS and assigned to work at the NYU building, was struck in the head by the bathroom door as she attempted to exit. She alleges that the door became stuck and malfunctioned, causing her to hit her head. At the time of the incident, Plaintiff was acting within the scope of her employment with CBS, which provided cleaning services at NYU's premises.

Plaintiff commenced this action in July 2020 with a summons and complaint alleging negligence in the maintenance of the premises (and also citing certain statutory provisions that have since been deemed inapplicable). NYU joined issue by answering the complaint in November 2020. In June 2021, NYU commenced a third-party action against CBS (Plaintiff's employer) for contractual and common-law indemnification, based on a janitorial services agreement between NYU and CBS. CBS filed an answer to the third-party complaint in August 2021. The parties then engaged in discovery through 2021–2023, including exchange of documents and depositions of the plaintiff and key witnesses. Notably, depositions were taken of NYU's building manager Jack McCarthy, CBS's senior supervisor Vincent Burner, and a CBS custodial employee Katrina Shkreli, among others. On May 30, 2025, after the close of discovery, NYU filed the instant motion for summary judgment. Plaintiff and CBS each submitted opposition papers (Plaintiff opposing dismissal of her claim, and CBS opposing indemnification), and NYU submitted a reply.

ARGUMENTS

NYU argues that it is entitled to summary judgment because (1) it did not create nor have actual or constructive notice of any dangerous condition related to the bathroom door, (2) the door was not inherently dangerous or defective, (3) no act or omission by NYU was a proximate cause of the accident – the incident was not foreseeable and Plaintiff's own conduct was the sole proximate cause – and (4) NYU is contractually entitled to defense and indemnification from CBS under the parties' janitorial services contract. In support of its motion, NYU points to evidence that no complaints or repair requests were ever made about the 12th-floor bathroom door prior to Plaintiff's injury. Plaintiff herself testified (in her initial deposition) that she had never made any complaint about that door and was unaware of any prior issues. NYU's building manager, Jack McCarthy, similarly affirmed that, before this incident, there were no recorded problems, work orders, or repairs relating to the door. CBS's employees corroborated this: Vincent Burner, CBS's on-site manager, testified that he had never been advised of any accidents or complaints involving the door, and another CBS custodian (Ms. Shkreli), who cleaned that very bathroom daily for years, did not recall any difficulties with the door or any reports of a problem. NYU contends that this unbroken history of no prior incidents demonstrates that the door was functioning normally and was not a hazardous condition. Absent any notice of a defect, NYU asserts it cannot be held liable for failing to remedy the condition. Moreover, NYU characterizes Plaintiff's accident as an unforeseeable occurrence potentially caused by her own actions, rather than by any negligence on NYU's part. Finally, with respect to the third-party claim, NYU cites the contractual indemnification clause in its agreement with CBS, under which CBS agreed to defend and hold NYU harmless from "any and all loss, expense, liability, damage or injury" arising out of CBS's work or its employees' acts or omissions. NYU argues this provision squarely applies to Plaintiff's claim (since Plaintiff was injured while performing CBS's janitorial work) and that the indemnity agreement is fully enforceable. NYU seeks summary judgment declaring that CBS must defend and indemnify NYU in this action.

In opposition, Plaintiff asserts that there are clear factual disputes which preclude summary judgment on her negligence claim. She maintains that the bathroom door was defective and unsafe, and that NYU had notice of the problem before her accident. In a sworn affidavit, Plaintiff provides specifics: "Several days before the accident, I noticed that the bathroom door on the 12th floor had a problem. The top hinge was loose, and the door would get stuck when opening or closing."She

states that as soon as she discovered this issue, she "told [her] supervisor, Edgar Saldana, about the issue using [the] work radio," reporting that "the door was damaged." Plaintiff heard Mr. Saldana repeat her report "over the radio to his bosses," yet, "[a]s far as [she] know[s], the door was never repaired" prior to her accident. Based on this account, Plaintiff argues that NYU (through its agents) had actual notice of the defective door and failed to address it. She emphasizes that CBS was contractually obligated to report hazardous conditions to NYU, and indeed Mr. Burner (the CBS manager) confirmed that part of CBS's role was "to assist the University in making them aware of things that needed to be repaired or addressed." He further testified that if a CBS employee discovered a problem with a bathroom door, the procedure was to report it up the chain of command, and as manager he "would be made aware of any complaints about those doors" voiced by CBS staff. Given this established reporting protocol, Plaintiff contends that notice to her CBS supervisor of the door defect must be imputed to NYU. She cites the principle that "knowledge acquired by an agent acting within the scope of his agency is imputed to the principal," arguing that CBS and its supervisory employees were acting as NYU's agents for purposes of premises maintenance. In any event, Plaintiff asserts that constructive notice can also be found: the door's sticking condition existed for at least four days and was observable (the door visibly jammed during use), which is a sufficient time for NYU's personnel to have discovered the issue through reasonable inspection. Unlike a transient hazard, this was an ongoing defect that persisted over multiple days, and Plaintiff herself (as well as presumably others using the restroom) experienced it repeatedly. Plaintiff also disputes NYU's claim that the door was not dangerous and that her accident was not foreseeable. She points out that a door which intermittently jams due to a loose hinge is inherently unsafe, as it can suddenly give way or require unusual force to open. Plaintiff notes that courts have recognized the foreseeability of injuries caused by malfunctioning doors. For example, she cites *Bielicki v. Excel Industries, Inc*., 104 AD3d 1318, 1319 (4th Dept 2013), a case where the Appellate Division, Fourth Department, observed that "the risk that a person attempting to pull open a stuck door might injure his or her arm or shoulder is as foreseeable as the risk of a person pushing his or her hand through a stuck door's glass pane while attempting to push the door open." In other words, it is entirely foreseeable that someone could be hurt by a sticking door. By contrast, NYU's suggestion that Plaintiff herself caused the accident by pushing the door too forcefully is, in P1aintiff's view, an attempt to improperly assign blame to the victim for an accident that was precipitated by a defective condition. Finally, Plaintiff defends the evidentiary basis of her opposition. She acknowledges that her deposition testimony did not include the precise timing of her prior complaint, but she argues that her affidavit is consistent with her testimony and merely provides "specific temporal details that were uncertain in her deposition." Both in deposition and affidavit, she has maintained that she reported the door problem to her supervisor before the accident, and her detailed sworn affidavit – far from being a "recent fabrication" – serves to "eliminate any credibility challenge" by confirming her prior notice to CBS management in a timely manner. Plaintiff contends that any minor discrepancies between her deposition and affidavit should be resolved by a fact-finder, and that her evidence is sufficient to raise triable issues of fact requiring a trial of this matter.

CBS, for its part, largely supports NYU in seeking dismissal of the complaint while opposing NYU's indemnification demand. In its submission, CBS expressly "adopts the arguments set forth by NYU in support of that part of [NYU's] motion" seeking dismissal of plaintiff's claims. CBS agrees that the record shows no notice of any door defect prior to the accident, and thus concurs that NYU should not be held liable to plaintiff. However, CBS argues

that NYU has not met the standard for summary judgment on the contractual indemnification claim. CBS emphasizes that under New York law, a party seeking contractual indemnity must demonstrate that it is free of negligence with respect to the underlying accident. If there is any triable issue as to the indemnitee's own negligence, summary judgment on indemnification must be denied as premature. CBS points out that here the very issue of NYU's negligence (notice of the door defect) remains in dispute; therefore, NYU cannot at this stage prove itself free from fault. CBS relies on cases such as *Cava Construction Co. v. Gealtec Remodeling Corp*., 58 AD3d 660 (2d Dept 2009), which held that where a question of fact exists regarding an owner's negligence, a conditional order of summary judgment for contractual indemnification must be denied as premature. Likewise, CBS cites Appellate Division, First Department, precedent that a landlord or owner cannot obtain summary judgment on an indemnification claim while issues of its negligence are unresolved (*e.g.*, *Corrales v. Reckson Assocs. Realty Corp*., 55 AD3d 469 [1st Dept 2008]). In addition, CBS notes that to the extent NYU's third-party pleading includes a common-law indemnification or contribution claim, such claim is barred by the Workers' Compensation Law § 11. Plaintiff was CBS's employee injured in the course of her employment, and her injuries (head and neck injuries) do not fall under the statute's definition of "grave" injuries that would permit a third-party claim against the employer. Thus, CBS argues, NYU's only possible indemnity claim is contractual, and even that cannot be resolved until it is clear that NYU was not negligent. CBS therefore asks the Court to deny NYU's motion for contractual defense and indemnification, or at most to defer it until after trial if NYU is found not negligent.

DISCUSSION

New York law imposes a duty upon landowners to maintain their premises in a reasonably safe condition under the circumstances. As the Court of Appeals has stated, "[a] landowner must act as a reasonable [person] in maintaining [the] property in a reasonably safe condition in view of all the circumstances, including the likelihood of injuries to others, the seriousness of the injury, and the burden of avoiding the risk" (*Basso v. Miller*, 40 NY2d 233, 241 [1976]). In a premises liability case, a property owner will be held liable for an injury caused by a dangerous condition on the property only if the plaintiff can demonstrate that the owner either created the condition or had actual or constructive notice of it (*Singh v. United Cerebral Palsy of N.Y. City, Inc*., 72 AD3d 272, 275 [1st Dept 2010]). Constructive notice of a defect exists when the condition is visible and apparent and has existed for a sufficient length of time before the accident such that the defendant had an opportunity to discover and remedy it (*Gordon v. Am. Museum of Nat. History*, 67 NY2d 836, 837 [1986]); *Early v. Hilton Hotels Corp*., 73 AD3d 559, 561 [1st Dept 2010]). If a defendant neither knew nor should have known about the allegedly hazardous condition, and did not create it, then generally the defendant cannot be held negligent for failing to correct it.

I. Prima Facie Showing

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to eliminate any material issues of fact. Only if this burden is met does it shift to the opposing party to produce evidence of a triable issue. Importantly, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a summary judgment motion (*see Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). In deciding the motion, the

evidence must be viewed in the light most favorable to the non-movant, and the court should not resolve credibility issues or weigh the evidence – those functions are reserved for the jury.

Here, NYU has met its prima facie burden of demonstrating an absence of triable factual issues on Plaintiff's negligence claim. NYU submitted evidence showing that it had no actual or constructive notice of any defect in the subject door prior to the accident. In particular, NYU points to the testimony of multiple witnesses establishing that no one – neither Plaintiff, nor other cleaning staff, nor building personnel – had ever observed or reported the bathroom door sticking or malfunctioning at any time before plaintiff's injury. Plaintiff herself (when first deposed) confirmed that she had never made any complaint about the door and was unaware of any complaints by others. NYU's building manager, Jack McCarthy, searched maintenance records and affirmed that there were "no complaints, work orders or repairs" concerning that bathroom door in the period before the incident. Likewise, CBS's on-site manager (Vincent Burner) and the regular bathroom cleaner (Katrina Shkreli) both testified that they encountered no problems with the door and never reported any issue to NYU. This evidence, which stands uncontradicted in NYU's moving papers, establishes prima facie that NYU did not have notice of a dangerous condition with the door. If no complaints were made despite frequent daily use of the door by CBS staff and others, and if no observable defect was recorded, NYU cannot be charged with having known of a hazard (or with having created one). NYU also presented evidence that it had a regular maintenance and cleaning presence (via CBS) in the building, which would likely have detected any persistent problem if it had existed. In sum, NYU's proof that the door had no known issues and had functioned without incident for years satisfied NYU's initial burden of showing that it maintained the premises in a reasonably safe condition (*see Basso*, 40 NY2d at 241; *Singh*, 72 AD3d at 275).

NYU likewise made a prima facie showing on the element of proximate cause by arguing that there was no foreseeable dangerous condition to cause the accident. The absence of prior incidents or complaints suggests that the door was not inherently dangerous. NYU's position (supported by deposition testimony) is that Plaintiff's injury was a fluke occurrence, not the product of any negligence on NYU's part. While Plaintiff disputes this characterization, NYU's initial submission shifted the burden by pointing out a lack of evidence that NYU's acts or omissions proximately caused the harm. In other words, NYU identified a gap in proof in plaintiff's case: Plaintiff could not point to any prior warning sign or repair request that NYU ignored, nor any aspect of the door's maintenance that NYU performed negligently.

Finally, with respect to the third-party indemnification claim, NYU produced the janitorial services contract between itself and CBS containing a broad indemnification clause. The contract (which is undisputed) provides that CBS "shall indemnify and hold harmless [NYU] from and against any and all loss, expense, liability, damage or injury" sustained as a result of claims or proceedings by any third party arising out of any acts or omissions of CBS or its employees in the performance of the work. By its plain terms, this clause encompasses the claim at bar – an injury to a CBS employee (Plaintiff) that occurred while she was performing janitorial work on NYU's premises. Such contractual indemnification provisions are enforceable under New York law so long as the intent to indemnify is expressed in clear and unmistakable language (*see Great N. Ins. Co. v. Interior Constr. Corp.*, 7 NY3d 412 [2006]); *Drzewinski v. Atl. Scaffold & Ladder Co.*, 70 NY2d 774 [1987]). NYU's evidence of a valid written indemnity agreement, on its face,

established a prima facie right to indemnification from CBS, subject to the conditions imposed by law (such as NYU not being found solely negligent, as discussed below).

Accordingly, the court finds that NYU's moving submissions were sufficient to meet its initial burden under CPLR § 3212 on both the Plaintiff's claim and the third-party claim. The burden thus shifted to the opposing parties to produce evidence of one or more genuine issues of material fact requiring a trial.

II. Remaining Issues of Fact

Plaintiff, in opposition, has succeeded in raising triable issues of fact as to NYU's negligence, precluding summary judgment on her claims. Viewing the evidence in the light most favorable to Plaintiff, there is a sharp factual dispute about whether the bathroom door was defective and whether NYU had notice of that defect prior to the accident. Plaintiff's sworn affidavit directly contradicts NYU's assertion that "no one ever complained" about the door. Plaintiff avers that she herself noticed the door jamming several days before the accident and promptly reported this issue to her supervisor, Edgar Saldana, via radio. She further states that she heard Mr. Saldana relay her report to his superiors (i.e. the CBS managers overseeing NYU's janitorial services). This testimony, if credited, would establish that NYU's agents were informed of a dangerous condition with the door at least four days before Plaintiff was injured. It thus squarely creates an issue of fact as to actual notice: a reasonable jury could find that NYU (acting through CBS personnel tasked with building maintenance) had actual knowledge of the door's propensity to stick and failed to remedy it in a timely manner.

NYU disputes that any such notice can be imputed to it, arguing that CBS and its employees were independent contractors, not agents, and that any report stayed within CBS's organization. This presents a mixed question of law and fact. Generally, a property owner is not charged with an independent contractor's knowledge unless the contractor is acting as the owner's agent in a relevant capacity. The critical factor is the degree of control the owner exerts over the contractor's work. Here, the record shows that CBS's duties for NYU included monitoring building conditions and "making [NYU] aware of things that needed to be repaired." Mr. Burner (the CBS manager) unequivocally testified that if a CBS employee noticed a problem with a bathroom door, the established procedure was to report it, and that he (Burner) would expect to be informed and would, in turn, inform NYU's facilities management as needed. In fact, Burner confirmed that this reporting procedure "was in place during the relevant time period" (2016–2017). From this evidence, a fact-finder could conclude that CBS functioned as an on-site agent for NYU with respect to identifying and communicating maintenance issues. Under New York law, "knowledge acquired by an agent acting within the scope of his agency is imputed to the principal" (*Center v. Hampton Affiliates*, 66 NY2d 782, 784 [1985]), even if the information is not formally communicated to the principal. If CBS was performing NYU's maintenance responsibilities and had been notified of the door defect through Plaintiff's report, a jury could impute that knowledge to NYU as actual notice of the condition. NYU, on the other hand, will argue that CBS was an independent entity and that any failure of CBS to escalate the issue cannot be held against NYU. This disagreement cannot be resolved as a matter of law on the present record; it hinges on factual determinations about the NYU/CBS relationship and credibility assessments of the witnesses (Plaintiff's claim that she reported the defect versus CBS/NYU's claim of never receiving any

such report). Those matters must be decided by the trier of fact. It is not the court's role on summary judgment to choose between competing accounts or to decide whether Plaintiff's testimony is more or less credible than defendants' evidence – such credibility issues alone mandate denial of summary judgment.

Even putting aside the question of actual notice, Plaintiff's evidence raises a factual issue regarding constructive notice. Plaintiff attests that the door's sticking problem (caused by a loose hinge) was ongoing for at least four days and was readily observable whenever the door was used. In those several days, Plaintiff used the door repeatedly and experienced the issue each time. This suggests the condition was not a transient momentary problem, but rather a persistent defect. If a jury finds that the door was visibly misaligned or jamming during that period, it could conclude that the condition was "visible and apparent" and existed for a sufficient length of time prior to the accident for NYU's personnel to have discovered and remedied it. Constructive notice is typically a jury question, especially where, as here, the plaintiff provides evidence that the hazard existed for a discernible period (multiple days). NYU argues that there is "no evidence as to how long [the] condition existed," but Plaintiff's sworn statement is indeed evidence of a timeframe – at least four days – which, if credited, undercuts NYU's contention. The *Gordon* case, heavily relied on by NYU, is distinguishable: in *Gordon*, the Court of Appeals found no constructive notice of a dropped paper because there was no proof of how long it had been on museum steps (it could have been mere minutes) (67 NY2d at 837-38). Here, by contrast, the defect was not a piece of litter appearing moments before the accident, but an ongoing mechanical issue with a door. A juror could infer that such a condition, manifest over several days, should have been detected by the exercise of reasonable care – particularly given that CBS custodians (acting on NYU's behalf) were entering and exiting that bathroom multiple times a day and had an opportunity to notice the sticking door. Whether NYU in the exercise of due care should have discovered this defect (through its employees or contractors) is a classic factual question inappropriate for resolution on papers.

Additionally, there is a material issue of fact as to whether the door was in fact dangerously defective at the time of the incident. NYU maintains that the door was ordinary and not hazardous, but Plaintiff has come forward with evidence that the door's top hinge was loose and that it intermittently jammed – essentially, that the door was not functioning as intended and posed a risk of sudden obstruction or movement. Photographs or expert evidence might have further illuminated this issue, but even without such evidence, Plaintiff's description of the door "getting stuck" is enough to create a triable issue. If the door jammed and then released unpredictably, a juror could deem it an unsafe condition that NYU should have addressed. On the other hand, a juror might believe NYU's witnesses that the door never malfunctioned prior to the accident and thus find no defect at all – but that conflict must be resolved at trial. In short, whether the door was in a defective condition is itself disputed. Summary judgment cannot be granted where the very existence of a dangerous condition is unclear and depends on whose account is believed.

Proximate cause and foreseeability are likewise questions for the jury on this record. NYU argues that Plaintiff's accident was not a foreseeable result of any negligence because, in NYU's view, there was no defect and Plaintiff simply pushed the door into herself. However, if Plaintiff's version is credited (i.e. that the door was sticking due to a maintenance issue) then it is entirely foreseeable that someone might be injured by such a door. The risk of a person struggling to open

a stuck door and getting hurt in the process is not far-fetched; it is a well-recognized scenario in premises cases. In *Bielicki v. Excel Industries, Inc*., *supra*, for example, the Appellate Division, Fourth Department, expressly held that the risk of injury from attempting to force open a stuck door is foreseeable and comparable to the risk of injury from other common door hazards (such as breaking a glass pane while pushing a stuck door). Accidents caused by doors that jam or close improperly are within the ambit of foreseeable harm that a property owner may be liable for, depending on the circumstances. Here, the alleged hazard, a door prone to sticking due to a loose hinge, had the very potential to cause someone to exert extra force and then suddenly fall forward or be struck when the door gave way. That is essentially what Plaintiff claims happened to her. There is nothing so attenuated or extraordinary about this sequence of events that would remove it from the realm of proximate cause. In contrast, NYU's suggestion that Plaintiff's own conduct was the sole cause of her injuries is not persuasive as a matter of law. Plaintiff was performing her routine work and simply tried to open the bathroom door to exit; if the door was defective and caused her to be injured, her attempt to open it cannot be deemed a superseding or unforeseeable act. At most, NYU's argument raises an issue of comparative negligence – i.e. whether Plaintiff might have used excessive force or failed to exercise due care for her own safety. But under CPLR Article 14-A, comparative fault does not bar recovery; it merely diminishes it in proportion to Plaintiff's culpability. Any assessment of Plaintiff's fault is for the jury to undertake if the evidence warrants. It is not a basis for the court to take the case away from the jury entirely. In sum, questions of proximate cause (was the accident a result of the door's condition?) and foreseeability (was the risk of this type of injury foreseeable?) are classic jury issues on which reasonable minds could differ. The court cannot find, on this record, that Plaintiff's accident was an unforeseeable "freak accident" beyond the scope of NYU's duty. To the contrary, if the door was known to stick, an injury of this general nature was a predictable outcome – which is precisely why the law imposes a duty on property owners to fix such conditions when notified of them.

Because the court finds triable issues regarding NYU's negligence, it follows that summary judgment on NYU's third-party indemnification claim must be denied as well. Under New York law, a party seeking contractual indemnification must prove that it was not negligent, so that its liability, if any, is purely vicarious or derivative (*Great N. Ins. Co. v. Interior Constr. Corp*., 7 NY3d 412 [2006]). If there are unresolved questions of fact about the would-be indemnitee's own negligence, the courts will not grant summary judgment enforcing an indemnification clause. That is exactly the situation here. NYU's potential negligence is still an open issue. Indeed, it is the core issue to be tried. Granting NYU summary judgment on its contractual indemnity claim against CBS at this juncture would be premature and inappropriate. The indemnification claim is conditional on NYU being found free of fault. Should NYU ultimately prevail at trial by proving that it was not negligent and that liability for Plaintiff's injuries rests solely with CBS (or arises vicariously), then NYU may be entitled to contractual indemnification at that time. But until such a determination is made, any ruling on indemnity is premature (*see Cava Constr. Co. v. Gealtec Remodeling Corp*., 58 AD3d 660, 662 [2d Dept 2009]; *Corrales v. Reckson Assocs. Realty Corp*., 55 AD3d 469 [1st Dept 2008][denying summary judgment on indemnification where owner's negligence remained in dispute]).

It is also worth noting that enforcement of the indemnification clause may ultimately be subject to the limitations of General Obligations Law § 5-322.1, which voids agreements that purport to indemnify a party for its own negligence in certain contexts. The contract here can be

read, consistent with that law, to require indemnification only to the extent NYU is not negligent (a standard indemnification saving clause). In any event, unless and until NYU is found completely free of negligence, the full extent of CBS's contractual duty to indemnify cannot be determined. For now, the court simply holds that NYU has not established its right to indemnification as a matter of law on this record. The branch of NYU's motion seeking summary judgment on contractual indemnification is therefore denied, without prejudice to renewal should NYU prevail at trial on the liability issues. Additionally, as CBS correctly argues, NYU's common-law indemnification and contribution claims against CBS are barred by the Workers' Compensation Law § 11 in the absence of a grave injury to Plaintiff. Plaintiff's injuries (head and neck injuries short of death or total disability) do not qualify as "grave" under the statute, so CBS cannot be impleaded for common-law indemnity. NYU's third-party claims are thus limited to contractual indemnification, which, as discussed, cannot be adjudicated in NYU's favor at this stage given the outstanding fact questions about NYU's negligence.

In sum, NYU has failed to demonstrate an absence of factual issues with respect to Plaintiff's negligence cause of action. To the contrary, Plaintiff's opposing evidence shows concrete disputes about the prior notice of the door defect and the circumstances of the accident, which must be resolved at trial. Summary judgment is a drastic remedy, and it is not warranted here, where the record presents a "he said/she said" factual conflict over a pivotal issue (whether the defect was reported) and where credibility and factual inferences are key. The court finds that each side has presented a version of events that a reasonable jury could credit, and therefore the case cannot be disposed of as a matter of law.

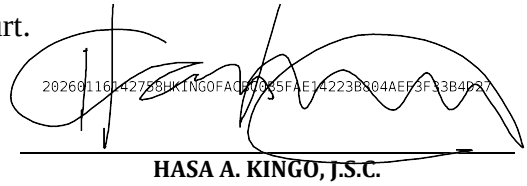
Accordingly, it is hereby

ORDERED that defendant NYU's motion for summary judgment is denied in its entirety. This denial applies to all causes of action in the complaint, which shall proceed to trial on the negligence claims; and it is further

ORDERED that the branch of the motion seeking summary judgment on NYU's third-party claim for contractual and common-law indemnification against CBS is denied as premature. The claims for indemnification may be revisited at trial or after trial if appropriate, consistent with this decision; and it is further

ORDERED that the parties are directed to appear for a settlement conference before the court on Wednesday February 24, 2026, at 2:15 PM in Room 308 of the courthouse located at 80 Centre Street, New York, NY 10013.

This constitutes the decision and order of the court.



01/14/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	